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**Special Issue: *White Collar Crime***

Special Issue Editors

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## Western Criminology Review

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The Western Criminology Review (WCR) is a forum for the publication and discussion of theory, research, policy, and practice in the rapidly changing and interdisciplinary fields of criminology and criminal justice. The Journal is intended to reflect local (Western), national, and international concerns. Historical and contemporary perspectives are encouraged, as are diverse methodological approaches. Although manuscripts that rely upon text and tables are invited, authors who use other resources permitted on the Internet — e.g., graphics, hypertext links, etc., are also welcome. The publication and distribution of articles will also be accompanied by electronic commentary and discussion. The Journal is made available exclusively on the Internet at the Western Criminology Review website (<http://wcr.sonoma.edu/>). The goal of WCR is to provide an attractive and meaningful outlet for academic and policy related publication and dialogue in a wide variety of substantive areas in criminology and criminal justice. Please direct any inquiries to one of the co-editors listed below.

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## Preface

Ever since sociologist Edwin Sutherland first introduced the concept of "white-collar crime" (WCC) at an American Sociological Association conference in 1939, it has been subject to challenge, criticism and ignorance—ignorance in that it has been largely neglected by mainstream criminology (and as Danielle McGurrin and her colleagues show in this issue). There is an essential sense in which white-collar crime feels different from conventional "street" crime; it is difficult to understand; it is highly dispersed, such that victims often don't even realize they are victims, and there are no obvious individual "robbers." Instead there are systems and processes, shadows and shavings, scamming and skullduggery. Not surprising then that WCC is more harmful, to more people, more frequently, than its conventional counterpart, "street crime." Street crime harms far less people, far less intensely.

Issues about whether WCC is a "real" crime, whether it produces physical as well as financial harm, whether its offenders should be treated as criminals, and what types of offenses should be included, remain unresolved. Such problems, together with the complexity of many white-collar offenses, their relative invisibility, the wide dispersal of their victims, the difficulty of enforcement, and their historical neglect by academic criminology, have brought numerous attempts at redefinition. Sutherland originally defined white-collar crime as offenses by persons of respectability and high social status committed in the course of their legitimate occupation. He was largely referring to business crime at a time when businesses were weakly regulated. Thus, what Sutherland called "socially injurious harms," were seen by his contemporary critics, such as Paul Tappan, as normal business practices; according to the law and courts, so called "white-collar crimes" were not criminal. Tappan argued that a crime can only be committed if it violates criminal law; to be a criminal one must be convicted by criminal courts of such an offense. However, because corporations influence law making, such practices were not seen as crimes. Sutherland argued that they should be redefined as crimes, and he

asserted that repeated violators of regulatory statutes should be seen as corporate recidivists.

Three features of white-collar crime are particularly important in defining it. First, the offender must occupy a legitimate occupational position in society, which constitutes his or her primary activity.<sup>1</sup> This excludes criminal enterprises, such as organized crime and avoids confusing activities of the Mafia with those of corporations such as Enron.<sup>2</sup> Second, the offense must involve use of the power afforded by legitimate positions for the purpose of increasing the economic, political, or social standing of the perpetrator and/or the organization that results in harm to one or more victims. Third, individuals or large groups of individuals can be offenders and victims of white-collar crime. Thus white-collar crime focuses on systemic problems; on "bad barrels" (organizations and processes) as well as "bad apples" (individuals).

Corporate crime, also called business crime, organizational crime, elite deviance, crimes of privilege, and corporate deviance, is referred to by some as "crimes of the powerful" or "suite crime." Here power refers to the offenders' position in society's occupational or class hierarchy, rather than to their use of power in offending (some power, e.g. physical force, weapons, threats, etc., is used by all criminals to commit their offense). The use of power is particularly true for corporate and governmental crimes, arguably the most consequential forms of white collar crimes. With respect to occupational (individual-level) crimes, there is still some debate as to whether white collar crime should refer only to higher status (versus lower status) individuals, though many WCC researchers study both. "Elite deviance" also refers to crimes by governments, or "state crime." Crimes include bribery and corruption, police entrapment, systemic police corruption, invasion of privacy, government medical experiments, human rights violations against U.S. citizens, and political repression against other nations.

This issue of the *Western Criminology Review* starts with a devastating analysis by Danielle McGurrin and her colleagues demonstrating a consistent neglect of white-

collar crime that borders on the tragic, but more positively points to solutions. Some of those solutions involve volumes such as this, highlighting the problem.

### Stuart Henry and Danielle McGurrin

#### Notes

<sup>1</sup> Friedrichs also typologizes avocational crimes—committed by individuals outside of their occupations because “the people involved, their motivations, and the consequences of avocational crime are often similar or identical to occupational white collar crimes (Friedrichs 2010:121).

<sup>2</sup> There is an intersection between enterprise crime and white collar crime; some white collar crime researchers do include enterprise or organized crime as fitting

appropriately under the domain of white collar crime studies. (See Friedrichs 2010; Kappeler and Potter 2005).

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## White Collar Crime Representation in the Criminological Literature Revisited, 2001-2010

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**Abstract:** *This study aims to measure what changes the disciplines of criminology and criminal justice have undergone over the past decade with respect to white collar crime representation in the criminological literature. It is well documented in the white collar crime literature that white collar offending causes a greater number of fatalities, injuries, and illnesses as well as greater economic losses than all street crimes combined. Nevertheless, our analysis of the contents of 15 leading criminology and criminal justice journals from 2001-2010, 13 best-selling introductory CCJ textbooks, and all U.S. Ph.D. granting criminology and criminal justice programs indicates that white collar crime continues to be underrepresented in the criminological literature relative to all street crimes, similar to the findings in Lynch et al.'s 2004 study. Since then, the U.S. has experienced two unprecedented corporate crime waves, in the early part of the 2000s and in the latter part of the decade. Implications for white collar crime representation findings are discussed within the context of harm and crime seriousness relative to street crimes.*

**Keywords:** corporate crime, criminological scholarship, white collar crime, white collar crime representation

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### INTRODUCTION

For over 20 years, white collar crime (WCC) researchers have empirically demonstrated that white collar crime is under-represented in the criminological and criminal justice literature relative to traditional street crimes (Cullen and Benson 1993; Lynch, McGurrin, and Fenwick 2004; Rothe and Ross 2008; Shichor 2009; Tunnell 1993; Wright 2000; Wright and Friedrichs 1991).

Despite overwhelming data demonstrating the greater loss of life, higher injuries and illnesses, and larger economic losses caused by white collar crimes (Coleman 2005; Lynch et. al 2004; Moore and Mills 1990), the disciplines of criminology and criminal justice have historically focused their research sights to a far greater degree on conventional crimes resulting in a sizeable imbalance between white collar and traditional crime representation in the criminological literature.

This study aims to measure what changes the disciplines of criminology and criminal justice have undergone over the past decade with respect to white collar crime representation in the criminological literature. To more fully appreciate the issue of outcomes in this study (i.e. scholarly representation), it is first necessary to establish some of the roots that originated this imbalance, as well as make a case for why such imbalances matter. How crimes are operationalized, as well as data availability, accessibility, and resource allocation are foundational for understanding which topics receive criminological attention and which topics are marginalized in the discipline.

## MEASURING COSTS AND CONSEQUENCES OF WHITE COLLAR CRIME

Before proceeding to our discussion of what we know about white collar crime data and its costs and consequences, it is important to note that the manner in which crimes are defined help determine how crime data are generated. This ontological fact precedes any examination of data collection which makes it an essential starting point for unpacking white collar crime measurement. With respect to criminal and civil law making, white collar harms<sup>1</sup> are defined under a vast assortment of constitutional, executive, administrative /regulatory, case, federal, and state criminal laws (Friedrichs 2010). Both the enormity and complexity of white collar offenses necessitate law enforcement efforts that extend well beyond traditional federal, state, and municipal policing capacities. This is useful to keep in mind as we turn our attention from white collar crime law making to law enforcement.

In the United States a relatively small number of less serious white collar crimes are recorded annually by the Federal Bureau of Investigation's Uniform Crime Reports (UCR) Program. According to the FBI, "Crimes Known to the Police" fall into one of two categories known as Part I and Part II offenses. The UCR's most serious offenses category, Part I, further distinguished between violent and property offenses and these are selected for inclusion based on their nature and volume. More specifically, the rationale and ranking of Part I and II offenses are that these are the crimes most likely to be reported to the police and that occur with sufficient frequency for purposes of comparison (USDOJ 2013).

Intimately related is that many (perhaps most) white collar crime victims are unaware of their victimization, and only infrequently report the crimes committed against them to traditional law enforcement agencies (Friedrichs 2010). Despite the fact that white collar crimes are often serious (causing greater loss of life, injuries, illnesses, and economic losses than all street crimes combined) and are committed routinely and against a broad range of the U.S. population, governmental white collar crime (WCC) data

collection efforts have yet to reflect this reality. The practical implication of the UCR's encapsulation of only a narrow range of less serious white collar crime under its Part II offense category is that criminological research is most commonly constrained to street crime, reifying a distorted and incomplete picture of crime as a social problem.

Issues regarding data availability, access, resources, time, and other practical considerations have obvious consequences for what, how, and why researchers choose or are able to research given topics and not others. With regard to the study of white collar crimes, the U.S. Department of Justice does not have a national database for its white collar crime statistics. Neither the FBI nor the Bureau of Justice Statistics (BJS) currently has a central repository for annually collecting, tracking, and reporting on the wide variety of white collar criminal offenses and offenders. As noted above, the FBI's Uniform Crime Report (UCR) Program includes Part II Offenses administered through the National Incident-Based Reporting System (NIBRS). The NIBRS does collect incident-based statistics on a very limited number of white collar crime offenses. Principally, white collar crime arrest data are collected on forgery/counterfeiting, fraud, bribery, and embezzlement—offense categories largely represented at the individual-level (Barnett 2000). However, an FBI report (USDOJ 2011) examining the measurement challenges with white collar offenses specified that both the UCR and NIBRS were developed with the crime data interests and needs of state and local law enforcement (not researchers) in mind, and because white collar crimes generally fall under the jurisdiction of federal agencies, many white collar crime categories (not to speak of white collar crime counts and rates) are not included.

Notably, organizational offenses, particularly corporate criminal offenses and crimes committed in a governmental context (i.e. state or state-corporate crimes) are not generally captured in the NIBRS. Moreover, although state participation in the NIBRS system is growing with 32 states participating as of June 2012 (JRSA 2012), according to the FBI report noted above on white collar crime measurement (Barnett 2000), white collar crimes only represent a little less than four percent of the incidents reported to the FBI. With the notable exception of identity theft, the Bureau of Justice Statistics' National Crime Victimization Survey (NCVS), which collects household and personal victimization data, does not include white collar crime.

However, the non-profit National White-Collar Crime Center (NW3C) does collect victimization survey data on WCC approximately once every five years. NW3C's *National Public Survey on White Collar Crime 2010* is the most recent and comprehensive nation-wide survey on WCC victimization measuring credit card fraud, price misrepresentation, unnecessary repairs, monetary losses (internet), identity theft, fraudulent business ventures, false

stockbroker information, and mortgage fraud. According to this survey, nearly one in four households (24 percent) and one in six individuals (17 percent) experienced an average of 1.3 WCC victimizations during 2010 (Huff, Desilets, and Kane 2011). Huff et al. (2011) assert that there is strong evidence from the Federal Trade Commission (whose consumer protection charge involves “preventing fraud, deception, and unfair business practices in the marketplace”), that such victimizations may be on the rise.

As one example, the Federal Trade Commission (FTC) documented a 27 percent increase in consumer complaints between 2007-2009 involving fraud, identity theft, and other crimes against consumers. And, in just 2009 alone, Huff et al. (2011) note that 1.9 million complaints were filed through the FTC’s Consumer Sentinel database with total losses of more than \$1.7 billion to victims. It remains to be seen whether a successful integration of resources and data sharing between the FTC and the newly formed Consumer Financial Protection Bureau will yield greater overall reporting in this area and whether this will improve overall data collection and protection for crimes against consumers.

Returning to the topic of capturing an overall measure of white collar crime, in the absence of systematic, annual governmental collection efforts, white collar crime researchers (as evidenced above) rely upon an enormous patchwork of data to locate, analyze, and interpret the frequency and scope with which white collar crimes are committed, as well as attempt to uncover the costs, consequences, and control of these crimes. In addition to the data sources already noted, white collar crime data resources include periodic governmental reports, university sourcebook and archival data, regulatory agency enforcement databases, non-profit databases, and case studies, to name a few. While these source categories provide vital data on selected white collar offense types, neither independently nor collectively do they provide even a near complete accounting of all white collar crime types. Despite the lack of a national database allowing for a more systematic measurement of white collar crime, even narrowly defined offense categories show evidence of overwhelming harm and expense by its perpetrators.

With respect to economic losses, the FBI and the American Association of Certified Fraud Examiners estimate financial losses from white collar crimes to be between \$300 and \$600 billion annually (Kane and Wall 2006). When one considers that in the early 2000s a mere five, albeit giant corporations (Enron, WorldCom, Qwest, Tyco and Global Crossing) committed financial frauds resulting in estimated losses of approximately \$460 billion (Rezaee 2005), it is likely that annual financial losses from white collar crime are even greater than the above estimates.

Since 2005, the FBI, in its *Financial Crimes Report to the Public*, has been providing aggregate summary reports on financial crimes, including corporate, securities and commodities, financial institution, mortgage, health care, insurance, and mass marketing frauds. Unfortunately, the FBI only lists case counts and recovery/restitution statistics for these financial crime categories; estimates of actual economic losses resulting from white collar crimes in each category are not included in the *FCRP*. Still, the FBI does provide targeted reports on economic losses for a small number of white collar criminal law violations. Selecting just two of these white collar crime types illustrate the massive economic losses resulting from these illegal acts. According to the FBI, non-health care related insurance industry fraud cost nearly \$30 billion in annual losses in 2011 (USDOJ 2012). Mortgage fraud limited to loans originating from fraudulent loan application data cost \$10 billion in 2010 (USDOJ n.d.) By comparison, the FBI’s *Crimes in the U.S. 2010* report an estimated \$15.7 billion in losses from all property crimes (USDOJ 2011).

With respect to physical harms caused by white collar crimes, Burns, Lynch, and Stretesky (2008) report that about 85 percent of the U.S. population is exposed to toxic air pollution each year, ten times greater than the number of individuals victimized by conventional crimes. According to the Earth Policy Institute (Fischlowitz-Roberts 2002), air pollution alone kills nearly 70,000 persons in the U.S. annually. In a national investigative report by the Hearst Corporation (2009) on patient safety and medical related deaths, the researchers found that nearly 200,000 Americans die each year due to preventable medical errors and preventable hospital-acquired infections. In the realm of worker safety and health, 4,690 American workers were killed on the job in 2010 by occupational injuries, and an additional three million workers were injured or became ill from occupational diseases in 2011 (USDOL 2012). Once again, by comparison, according to the FBI’s *Crimes in the U.S. 2010* report, an estimated 14,748 persons were murdered in 2010 (USDOJ 2011).

The data above highlight two chief points often asserted by white collar crime researchers: one, the data gaps due to the absence of a national white collar crime database or sourcebook is likely quite large with undercounting difficult to estimate, and two, despite these massive data gaps, there is overwhelming evidence to support the fact that collectively white collar crimes cause greater physical and financial harms than conventional street crimes.

## **THE UNDERREPRESENTATION OF WHITE COLLAR CRIME RESEARCH**

With the understanding that scholarly attention to a given topic can have meaningful consequences ranging from the dissemination of knowledge in the classroom to



future CCJ professionals and researchers, to impacting relevant public policy decision-making, to outcomes borne by communities, citizens, and the environment, many white collar crime researchers have studied the subfield's representation.

The first study to identify this trend of white collar crime underrepresentation was conducted by Wright and Friedrichs (1991). The authors examined white collar crime coverage in introductory criminology and criminal justice (CCJ) textbooks and course offerings in criminal justice programs. The purpose of their study was twofold. First, the authors aimed to discover whether coverage of white collar crime, in comparison to street crime, had increased between 1956-1965 and 1981-1990 in the textbooks examined (n=70). Second, Wright and Friedrichs (1991) examined whether there had been an increase in white collar crime course offerings, in comparison to women and crime and comparative CCJ courses, in the surveyed departments between the years 1986 (n=782) and 1991 (n=943). In their findings, the authors concluded that while white collar crime coverage had increased in textbooks and course offerings over the study years, the topics of both white collar crime and women and crime made much smaller inroads compared to comparative criminology and criminal justice. Moreover, they found that white collar crime courses lagged behind both comparative CCJ and women and crime courses in their 1991 data. The publication of this study provided a catalyst for future white collar crime representation scholarship over the next two decades.

Two more studies examining white collar crime representation were published in the early 1990s. Cullen and Benson (1993) published a content analysis study specifically looking at the criminal justice curriculum and the prevalence of courses dealing with white collar crime. Their findings were consistent with those of Wright and Friedrichs (1991). The authors concurred that there was a lack of white collar crime representation in comparison to other criminal justice courses. Next, Tunnell (1993) analyzed introductory CCJ textbooks published in the 1970s (n=11) and in or after 1980 (n=38). Through a qualitative and quantitative content analysis looking specifically at the coverage dedicated to a sub-type of white collar crime, political crime, Tunnell demonstrated that in comparison to mainstream criminological topics, political crime was nearly absent in the criminal justice textbooks (0.05 percent) and scarcely represented in the criminology textbooks (2.7 percent).

The 2000s brought an additional set of white collar crime representation articles that illustrated similar trends to the studies conducted in the 1990s. Wright (2000) delved deeper into the content of introductory criminology textbooks (n=34), published between 1990 and 1999, by examining their coverage of critical and radical perspectives, as these perspectives often inform white collar crime scholarship. Findings concluded that while the

amount of pages dedicated to the two perspectives varied between texts, on average, the topics received only 27.8 devoted pages. However, Wright noted that this number was highly skewed by a small sample of textbooks printing more pages dedicated to the critical and radical perspectives than other textbooks. As before, the pattern of white collar crime under-representation in the CCJ literature remained consistent a decade after it was originally identified by Wright and Friedrichs in 1991.

Lynch et al. (2004) expanded the study of white collar crime representation further in 2004 by incorporating three facets of the criminological field into their study: CCJ journals (n=8), introductory CCJ textbooks (n=16), and CCJ doctoral programs (n=21). Not surprisingly, their findings demonstrated that white collar crime representation was minimal in each category. For example, only 3.6 percent of the 1,118 journal articles collected focused upon white collar crime. Similarly, the coverage of white collar crime that appeared in their examination of CCJ textbooks (4.5 percent) and doctoral programs that required a white collar crime course (0 percent) ranged from minimal to non-existent.

In 2008, Rothe and Ross revisited Tunnell's 1993 research by examining eight leading introductory criminology textbooks for coverage of state crime. Like Tunnell's finding 15 years earlier, they found no evidence of increased coverage. Specifically, Rothe and Ross (2008) found that none of the texts incorporated the topic of state crime within the broader category of white collar crime or as an independent field of study; no texts included a review of the state crime literature; and no text included a theoretical framework for understanding and explaining the causes, correlates, dynamics and other components of state crime.

A year later, Shichor (2009) published an article specifically looking at how frequently white collar crime topics *and* researchers were cited in criminology and criminal justice introductory textbooks and academic journals. He concluded that compared to traditional street crime and its researchers, the coverage of white collar crime and its researchers was highly disproportionate. Shichor's study called attention not only to the under-representation of white collar crime in criminological scholarship, but the overall under-representation of white collar crime scholars in the field, as well.

As a more critical approach to studying crime, WCC scholars owe a large intellectual debt to the early works of American conflict and later radical criminologists including William Chambliss, Richard Quinney, Julia and Herman Schwendinger, Anthony Platt, and Paul Takagi, to name a prominent few. Their recognition and understanding of the political economy of crime, which emerged most decidedly in the famed Berkeley School of Criminology marked an important turning point for the discipline of criminology in the late 1960s. Later generations of radical, critical, and integrative

criminological scholars continue to advance this tradition (e.g. Barak 2009, 1998; Braithwaite 2008; Croall 2001; Lynch 2005; Michalowski and Kramer 2006), and their work has important theoretical utility for both the study and control of white collar crime.

Returning to the current study, we employ Barak's (2009, 1998:12) theoretical premise that disciplinary structures help produce and construct our worlds just as the models of what and how we research or investigate give shape to how we view our worlds. Following this line of reasoning, Barak (1998) argues that criminology [like any academic discipline] is inextricably linked with the dominant societal values of which it is a part. Barak (1998) continues that the development of criminological research evolved with the influence of particular disciplines, incorporating some types of knowledge while excluding others. These vestiges from early in the development of both criminology and criminal justice can be seen by the theoretical influences of foundational "roots" disciplines like biology, psychology, sociology, and law for example. However, disciplines outside this core (e.g. heterodox economics, industrial labor, environmental science, to name a few) are very infrequently incorporated into either criminological theorizing or analysis to integrate a more holistic body of CCJ scholarship. Perhaps the disciplinary tendency to focus more narrowly on its historical roots and traditional research areas (as supported in multiple ways by governmental policies and CCJ history, culture, and practices), might explain why even extreme external events outside the knowledge core might not be sufficient to dramatically alter either criminological research endeavors or the representation of criminology and criminal justice topics in the literature. Even though the U.S. has experienced two unprecedented corporate crime waves, in the early part of the 2000s and in the latter part of the decade, we hypothesize that white collar crime research continues to be under-represented in criminological scholarship as well as textbooks and Ph.D. programs.

## DATA AND METHODS

This study examines the representation of white collar crime in 15 leading criminology and criminal justice journals, 13 introductory textbooks, and all criminology and criminal justice doctoral programs in the United States. In establishing the rationale for our current study, we wanted to answer two essential research questions about white collar crime representation in the criminological literature. Firstly, compared to traditional criminological topics, how frequently are white collar crime topics represented in criminology and criminal justice journals, textbooks, and Ph.D. programs? Secondly, over the past ten years, that is, the first decade of the 2000s, how has white collar crime representation in CCJ journals, textbooks, and doctoral programs changed?

The methodological approach we employed in the current study for the *non-white collar crime* articles was to adopt the same keyword search strategy used in the Lynch et al. (2004) study<sup>2</sup>. After carefully examining the thousands of journal articles, table of contents, and indices in the journals and textbooks selected, we found that these major topics continued to be important staples of the criminological literature and therefore appropriate for inclusion in the current study. We coded non-white collar crime articles as *criminal law violations* (index crimes,<sup>3</sup> domestic violence/intimate partner violence, hate crimes, terrorism, international-crimes-non-white collar, and cybercrimes-non-white collar), *criminal lifestyles* (drugs, DUI/DWI, guns, gangs), *demographics* (race/ethnicity, gender, age), *representation/perception of crime*, *criminal justice system/administration* (policing, courts, and corrections), and *researching criminal behavior* (theory, methods, statistical analysis).

For the *white collar crime* article and text coding, we expanded the approach by Lynch et al. (2004) by employing David Friedrichs's (2010) white collar crime typologies as elucidated in his seminal white collar crime text, *Trusted Criminals*.<sup>4</sup> White collar crimes were coded as corporate, enterprise/entrepreneurial, governmental /state-corporate, occupational, and white collar crime theory. Articles that did not fit into any of the above categories were coded as "other."

Although there is some debate as to the most appropriate definition of "white collar crime," we utilized the definition set forth by fifteen white collar crime scholars at a 1996 National White Collar Crime meeting. White collar crime refers to "illegal or unethical acts that violate fiduciary responsibility of public trust committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain" (Helmkamp, Ball, and Townsend 1996:351). As noted above, articles coded as white collar crime were sub-categorized using Friedrichs' (2010:7) core typologies in *Trusted Criminals*. *Corporate crime* refers to illegal and harmful acts committed by corporate officers or employees to promote corporate and personal interests.<sup>5</sup>

*Enterprise/entrepreneurial white collar crime* refers to two distinct but related typologies. Enterprise crimes refer to offenses involving cooperative syndicated and business activities, and entrepreneurial crimes are used to describe a hybrid of traditional professional crime and entrepreneurial activities (Friedrichs 2010:7). *Governmental and state-corporate crimes* are also two distinct but related white collar crime categories. Governmental crime is an umbrella term that includes both activities committed on behalf of governments by agencies and officers of the government (i.e., state crime) and by government officials for their own enrichment (i.e., political white collar crime). State-corporate crime refers to white collar crimes committed by governments in

collusion with the corporation(s) or its organizational entities (Friedrichs 2010:7). And, *occupational crime* refers to illegal and unethical activity committed within the context of a legitimate occupation (2010:7). Articles related specifically to advancing or testing theory were coded as *White Collar Crime Theory*. And, articles that could not be uniquely classified/captured under the five broad white collar crime categories above were coded as *white collar crime-other*.

### Journal Articles

In order to assess the representation of white collar crime in criminology and criminal justice (CCJ) journals, we selected fifteen CCJ journals (Appendix A). The majority of these journals, particularly the top ten journals, are consistently recognized as the top criminology and criminal justice journals from prestige surveys (Sorensen et al. 2006), and Institute for Scientific Information (now Thompson Reuters) impact factor-based assessments (Science Watch 2009; Sorensen et al. 2009). Most of these journals were employed in previous criminological citation research and were also included in the most recent white collar crime citation study (Lynch et al. 2004).

In addition to the highest ranked journals, we also included two critically-oriented journals (*Social Justice and Crime, Law and Social Change*) to assess whether white collar crime scholarship was included or excluded to a similar extent in both traditional and critical criminology and criminal justice journals. We included a second major international CCJ journal (*Canadian Journal of Criminology and Criminal Justice*) to assess whether white collar crime representation differences existed among top American, British, and Canadian CCJ journals. An added rationale for including critical and international journals in our study was to include all eight of the journals used in Lynch et al.'s (2004) white collar and corporate crime representation study. Data collection in these 15 journals consisted of scholarly articles published from 2001 to 2010, representing ten years of CCJ scholarship (n=4,878 articles). Full-text articles were collected from a university online library database. When journals were not available in the university database, articles were collected from the journal's website.

For each full-text article, the following information was collected: journal name, title, author(s), volume number, issue number, year of publication, page count, and abstract. Each article was analyzed in order to assess the primary topical focus. If an article did not fit into one of the categories below, we coded the article as "other". Although many articles fit into more than one category, we selected the *primary* topical focus of both white collar and non-white collar crime articles utilizing key, commonly indexed criminological and criminal justice concepts and terms (Lynch et al. 2004). To establish high intercoder reliability, we developed a coding protocol and

implemented three trial runs. Two research assistants coded each case independently. Next, an assistant reviewed each spreadsheet for cases lacking intercoder agreement. The authors' reviewed each instance of conflicting data and came to an agreement on the proper values.

### Textbooks

Thirteen of the best-selling introductory CCJ textbooks were included in our analysis. As utilized in previous CCJ textbook content analyses studies (Keith and Ender 2004; Rhineberger 2006), we contacted each of the textbook publishers advertised in the 2009 and 2010 American Society of Criminology Conference Program to determine their best-selling textbooks in CCJ and requested exam copies of each textbook. For each textbook, we counted the total number of pages (excluding glossary, indices, table of contents, chapter summaries, bibliography, and appendices) and categorized page counts based on the same topical categories as utilized in the journal article analysis. Both of these methodological approaches were also used in the Lynch (2004) et al. study.

### Ph.D. Programs

In 1998, twenty-one schools in the U.S. offered a doctoral degree in criminal justice or criminology. According to the Association of Doctoral Programs in Criminology and Criminal Justice (2012), there are currently thirty-eight CCJ doctoral programs in the United States. A brief questionnaire was sent to the Program Director or Chair of each doctoral program in order to determine if the program currently offers courses in white collar crime. If a questionnaire was not returned, a follow-up phone interview was conducted. Program Directors/Chairs were asked if the doctoral program offered a white collar crime course and if the course was required. All but one school responded to our questionnaire or via phone interview. We asked if a white collar crime course had been offered in the past two years and if the program had plans to include a white collar crime course in the future. If a white collar crime course was offered, we asked how long this course had been offered in the program as well as the title of the course. Information was also obtained via program websites.

### Limitations

With regard to methodological limitations, since not all of the measures included in the Lynch et al. (2004) research are the same as what we included in the current study, a direct comparison for all results is not possible. Additionally, this study only measures white collar crime *representation* in the criminological literature. It does not measure white collar crime article *submissions* or *editorial decisions* in the 15 CCJ journals examined. As Lynch et al.

(2004) noted, submission and outcome data would allow researchers to analyze any apparent bias with respect to the editorial decision-making process. However, since most journals do not collect these detailed data and since each new journal editor may or may not adopt the practices of his/her predecessor, the consistency in resources and record-keeping make long term analysis of submissions and outcomes particularly challenging. Absent such record-keeping uniformity across CCJ journals, future survey research could examine white collar crime scholars' submission practices and experiences.

## RESULTS

Our findings show that despite two corporate crime waves in the first decade of the 21<sup>st</sup> century, including the financial frauds that contributed to the largest economic recession since the Great Depression, white collar crime continues to be underrepresented in CCJ journals, textbooks, and doctoral programs, remaining little changed since Lynch et al.'s (2004) study.

### Journal Articles

We examined 4,878 articles from fifteen CCJ journals (see Appendix A) from 2001 to 2010. Of these 4,878 articles, 289 (6.3 percent) articles focused on white collar crime (see Table 1). While this percentage is higher than the percent of white collar crime articles in the Lynch et al. (2004) study (3.6 percent), if we exclude articles from *Crime, Law, and Social Change* (n=108), the percentage of white collar crime articles falls to 3.9 percent (n=178). For the ten CCJ journals ranked highest in prestige (Sorensen et al. 2006), only 98 articles (3.4 percent) focused on white collar crime. For the top three CCJ journals by impact factor and prestige (Sorensen et al. 2009, 2006), *Criminology*, *Justice Quarterly*, and *Journal of Research in Crime and Delinquency*, only 14 articles of the 791 articles (1.8 percent) focused on white collar crime.

Similar to the findings in Lynch et al. (2004), with the exception of *The British Journal of Criminology* (n=42), critically oriented journals were much more likely to include articles on white collar crime and were the most significant source of research on white collar crime. Slightly more than half of all white collar crime articles (n=150) were published either in *Crime, Law, and Social Change* (n=108) or *Social Justice* (n=42). In the Lynch et al. (2004) study, 16 percent of articles appearing in *Crime, Law and Social Change* focused on white collar crime topics; this percentage more than doubled in our analysis to 37.4 percent. *Crime, Law, and Social Change* was also the only journal in our sample that published more articles on white collar crime (51 percent) than non-white collar crime articles. Notably, both *Crime, Law, and Social Change* and *Social Justice* have the lowest impact factor (0.19; 0.04) and ranking (27; 41) respectively, of the 15

CCJ journals in our sample (CJR 2012; Sorensen 2009).<sup>6</sup> In addition to the top two journals for white collar crime representation, the *British Journal of Criminology* represented 14.5 percent of the coverage and *Law and Society Review* and *Journal of Criminal Law and Criminology* each published 24 white collar crime-related articles, respectively, representing 16.6 percent of the overall WCC coverage in our 15 journals. One-third of the journals (n=5) in our study published 83 percent of the articles on white collar crime topics. Only the *Journal of Criminal Law and Criminology* was ranked in the top 10 journals by both Red Jasper's Center for Journal Ranking (2012) and Thomson Reuter's Social Science Citation Index (2009). The *Journal of Research in Crime and Delinquency* (n=2, 0.7 percent), *Crime and Delinquency* (n=2, 0.7 percent), *Criminal Justice and Behavior* (n=2, 0.7 percent) and *Canadian Journal of Criminology* (n=1, 0.3 percent) had the fewest white collar crime journal article counts. Of the journals noted above, all but the *Canadian Journal of Criminology* are ranked in the top 10 criminology and criminal justice journals (CJR 2012; Sorensen 2009).

Another way of examining these data is to compare side-by-side the representation of articles dedicated to white collar criminal or regulatory law violations to the representation of traditional criminal law violations. Using a more conservative approach to specific categorical comparisons than Lynch et al. (2004), criminal law violations included Index (Part I) crimes, domestic violence/intimate partner violence, hate crimes, terrorism, international crimes, and cybercrimes (non-white collar). The authors of this study recognize that violent and property crimes not expressly identified in the journal articles as one of the eight Index I crimes (e.g. DV/IPV, hate crimes, terrorism, etc.) are listed as separate categories, though the *actus reus* may be the same. Since each article was only coded with one topic category (as determined by the author's primary article focus), there is no overlap between any of the non-white collar or white collar crime categories. These topics collectively represented 13.7 percent (n=667) of the articles published in our sample compared to 5.7 percent (n=280) of the articles published on corporate, professional/organized, governmental/corporate-state, or occupational crimes. If we also incorporate the category of criminal lifestyles which included several UCR Part II offenses (drugs, DUI/DWI, guns, and gangs) (n=340), the percentage of articles dedicated to traditional criminal law violations jumped to 21 percent, more than three times the number of articles dedicated to white collar crimes. It is also worth noting that because the authors coded only the primary journal article subject topic—this count underestimates the total number of articles that include traditional criminal law violation representations.

**Table 1: White Collar Crime Representation in CCJ Journals\***

<b>Journal</b>	<b>WCC n (%)</b>	<b>Non-WCC n (%)</b>	<b>Total N (%)</b>
<i>Criminology</i>	8 (2.3%)	336 (97.7%)	344 (100%)
<i>Justice Quarterly</i>	4 (1.4%)	277 (98.6%)	281 (100%)
<i>Journal of Research in Crime and Delinquency</i>	2 (1.2%)	164 (98.8%)	166 (100%)
<i>Law and Society Review</i>	24 (9.7%)	247 (90.3%)	271 (100%)
<i>Journal of Criminal Law and Criminology</i>	24 (9.8%)	246 (90.2%)	270 (100%)
<i>Crime and Delinquency</i>	2 (0.8%)	254 (99.2%)	256 (100%)
<i>Criminology and Public Policy</i>	4 (1%)	401 (99%)	405 (100%)
<i>Journal of Quantitative Criminology</i>	0 (0%)	193 (100%)	193 (100%)
<i>Theoretical Criminology</i>	13 (7.5)	173 (92.5%)	186 (100%)
<i>Criminal Justice and Behavior</i>	2 (0.4%)	508 (99.6%)	510 (100%)
<i>Social Justice</i>	42 (13.4%)	313 (86.6%)	355 (100%)
<i>Crime, Law, and Social Change</i>	108 (51.2%)	211 (48.8%)	319(100%)
<i>Canadian Journal of Criminology</i>	1 (0.4%)	248 (99.6%)	249 (100%)
<i>The British Journal of Criminology</i>	42 (10%)	419 (90%)	461 (100%)
<i>The Journal of Criminal Justice</i>	13 (2.2%)	599 (97.8%)	612 (100%)
<b>Total</b>	<b>289 (6.3%)</b>	<b>4589 (93.7%)</b>	<b>4878 (100%)</b>

\*The authors wish to note that *Criminology and Public Policy* had a dedicated issue to white collar crime topics in 2010 (Volume 9, Issue 3). In addition to the four journal articles, the issue included 10 separate commentaries on WCC.

### Textbooks

The thirteen best-selling CCJ textbooks sampled (see Appendix B) contained a total of 5,953 pages of content (excluding glossaries, indices, tables of contents, chapter summaries, bibliographies, and appendices). White collar crime topics represented 5.7 percent (n=340) pages of text (see Table 2), a marginal increase as compared to Lynch et al.'s (2004) 4.5 percent (n=425), the latter of which contained about one-third more pages of textbook content. The white collar crime pages were sub-categorized as follows: corporate crime (n=102, 30 percent), professional/organized crime (n=144, 42.4 percent), governmental/state-corporate crime (n=32, 9.4 percent), occupational crime (n=15, 4.4 percent), white collar crime theory (n=20; 5.9 percent), and white collar crime-other (n=28, 7.9 percent). In the textbook sample, 94.3 percent (n=5,613 pages) covered non-white collar crime categories.

Although the overall percentage of white collar crime representation in both CCJ journals and textbooks is quite nominal relative to the coverage of non-white collar crime topics (6.3 percent and 5.7 percent respectively), it is important to recognize the variance of white collar representation as well as the specific types of WCC articles

and textbook content that are represented most frequently in the criminological literature. Similar to what Wright and Friedrichs (1991) found more than 20 years ago, on the balance, criminology textbooks generally provide greater white collar crime coverage relative to criminal justice texts. In the current study, the percentage of white collar crime representation in *criminology* texts ranged from 6.2 percent to 23.1 percent with an average coverage of 11.62 percent. *Introduction to Criminology*, by Frank Hagan, dedicated the largest number of text pages to white collar crime (n=84) and had the largest percentage of white collar crime content of the criminology texts. Conversely, with only one notable exception, white collar crime representation in the *criminal justice* texts we sampled was largely absent.

Of the eight best-selling introduction to *criminal justice* textbooks sampled, three had no pages dedicated to white collar crime, three had less than one percent (n=2; n=5; n=1), one had three percent (n=21), and one had 15.3 percent (n=57). It is interesting to note that the latter criminal justice text with the greatest white collar crime representation, *The Mythology of Crime and Criminal Justice*, by Kappeler and Potter, had nearly double the coverage of the seven other CJ textbooks *combined*. Also

worth noting is that 42.4 percent (n=144) of the white collar crime pages in criminal justice textbooks were on the topics of organized crimes or professional crimes (what Friedrichs terms as enterprise and contreprenurial crimes, respectively), the categories that share the most characteristics with traditional street crimes. Even the *Mythology of Crime and Criminal Justice* text, which had the highest percentage of white collar crime coverage of any criminal justice textbook sampled, devoted more than 54 percent of its WCC coverage to organized and professional crimes (with the remaining 46 percent dedicated to corporate crime).

In comparison to both criminology and criminal justice textbooks, criminology and criminal justice journals provided relatively comparable coverage to corporate crimes, which, alongside governmental crimes, are generally regarded by white collar crime scholars as the most consequential forms of white collar crime (see Calavita, Tillman and Pontell 1997; Friedrichs 2010; Kramer and Michalowski 1990; Lynch and Michalowski 2005; Michalowski and Kramer 2006; Tombs and Whyte 2003). Specifically, 26 percent of the white collar crime articles in CCJ journals were dedicated to corporate crime

compared to 30 percent in the CCJ textbooks (more than one-third of which came from the criminology textbook *Crime, Justice, and Society*).

The differences in types of white collar crime coverage between CCJ journals and textbooks were most pronounced in the categories of governmental and state-corporate crime and professional/organized crime. *CCJ journals had more than four times as many articles* (44.3 percent versus 10.8 percent) dedicated to governmental and state-corporate crimes as CCJ textbooks had pages dedicated to this topic. However, it should also be noted that nine of the 15 CCJ *journals* in our sample had either one or no articles on governmental or corporate-state crime and only two journals, *Crime, Law and Social Change* and *Social Justice*, represented 66 percent (n=73) of the articles on governmental and corporate-state crime. Conversely, CCJ textbooks had more than two and one half times the coverage of professional and organized crimes compared to CCJ journals (n=144, 42 percent pages versus n=45, 15.6 percent percent). This particular finding, as noted previously, is consistent with the pattern of CCJ textbooks covering white collar crime types that share an affinity or characteristics of traditional criminal law violations.

**Table 2: White Collar Crime Representation in CCJ Textbooks**

<b>Textbook</b>	<b>WCC Pages n (%)</b>	<b>Non-WCC Pages n (%)</b>	<b>Total Pages n (%)</b>
<i>The Mythology of Crime and Criminal Justice</i>	57 (16.6%)	287 (83.4%)	344 (100%)
<i>Introduction to Criminology, Seventh Edition</i>	84 (23.1%)	279 (76.9%)	363 (100%)
<i>Criminology</i>	52 (6.2%)	788 (93.8%)	840 (100%)
<i>Criminal Justice: A Brief Introduction</i>	2 (.6%)	354 (99.4%)	356 (100%)
<i>Criminal Justice Today</i>	3 (.5%)	626 (99.5%)	629 (100%)
<i>Criminology: Theory, Research, and Policy</i>	20 (7.2%)	258 (92.8 %)	278 (100%)
<i>Crime, Justice, and Society</i>	66 (13.8%)	414 (86.2%)	480 (100%)
<i>Introduction to Criminal Justice, 7th edition</i>	0 (0%)	479 (100%)	479 (100%)
<i>Introduction to Criminal Justice, 13th edition</i>	20 (3.6%)	541 (96.4%)	561 (100%)
<i>Criminal Justice Essentials, 9th edition</i>	1 (.2%)	409 (99.8%)	410 (100%)
<i>Crime and Criminology, 13th edition</i>	35 (7.8%)	416 (92.2%)	451 (100%)
<i>The Decision-Making Network</i>	0 (0%)	438 (438%)	438 (100%)
<i>Crime and Justice in America</i>	0	324	324
<b>TOTAL</b>	340	5613	5953

#### **Ph.D. Programs**

There are currently thirty-eight CCJ doctoral programs in the United States (ADPCCJ 2012). All but one program responded to our survey for a 97 percent response rate. Sixteen (42 percent) of the doctoral programs offer a white collar crime course while the majority of programs, twenty-one (58 percent), do not offer a white collar crime course. Similarly, Lynch et al. (2004) found that nine of 21 doctoral programs offered a course in white collar crime

(43 percent). Only one program requires a white collar crime course; however, this course is only required in one of three tracks in the doctoral curriculum (University of Cincinnati). At the time of the Lynch et al. (2004) study, no doctoral program required a white collar crime course in any capacity.

The sixteen programs that offer a white collar crime course plan to continue this course offering, and one

program stated that they would likely offer such a course in the future. Twelve CCJ doctoral programs have no plans to offer a white collar crime course in the future. One program stated that students could take the course as an independent study, two programs were unsure, one program stated that students could take such a course in another program, and four programs did not respond. Titles of white collar crime courses include the following: White Collar Crime (n=8), Crimes of the Powerful (n=3), Crimes of the State (n=1), Economics and Crime (n=1), Financial Crime (n=1), Organized and White Collar Crime (n=1) and WCC Topic Varies (n=1). Of the sixteen schools that offer white collar crime courses, fourteen schools responded to the question, "How long has a white-collar crime course been offered in your program?" Seven programs indicated that a white collar crime course has been offered for a decade or longer. Four programs indicated that they have offered a white collar crime course for the past five to seven years. Three programs started offering a white collar course within the past three years. Thirteen programs offer a white collar crime course at least once every two years; only two programs stated that the course is offered annually. Three programs stated that a white collar crime course has not been offered in the past two years and one program stated that the course is offered once every four years.

## SUMMARY AND RECOMMENDATIONS

As demonstrated in the results above, CCJ journals contained slightly more white collar crime coverage relative to CCJ textbooks and included more consequential forms of white collar crime overall. Also, criminology publications provided significantly more white collar crime representation compared with the criminal justice literature. However, the distribution of white collar crime representation in both CCJ journals and textbooks is contained to a comparatively small number of journals and texts relative to the distribution of non-white collar crime literature in these publications.

Similarly, less than half of all U.S. doctoral programs even offer a white collar crime course, much less require it. With respect to the C/CJ comparison, it may be somewhat expected that criminology would devote greater coverage to WCC relative to criminal justice given the multi-disciplinary nature and complexities of many white collar crimes relative to most traditional crimes. However, given the well-documented greater physical and financial harms that WCC cause, the persistence of underrepresentation in the criminological literature and the nominal progress in this area remains a cause of concern for both criminology and criminal justice.

Whether one examines the criminalization of white collar offenses (Black 2009; Cullen et al. 2006), the allocation of resources for its enforcement (Black 2012, 2011; Strader 2011), the prosecution of white collar crimes

(Barak 2012), the sentencing of white collar offenders (Van Slyke 2012), or the representation of white collar crimes in the criminological literature, the results are almost uniformly the same: white collar crimes are not treated as seriously as traditional street crimes. The fact that the State has historically dedicated comparatively fewer resources to combating white collar crime is neither new nor surprising. However, in other areas of criminology and criminal justice, criminologists are generally among the leading contributors of scholarship that promote best evidence-based practices as well as research that challenges the follies and perils of ineffectual and/or harmful public policies related to crime. That this is not generally the case with respect to white collar crime supports Barak's (1998:4) contention in *Integrating Criminologies* that the depth afforded to a narrower range of "preferred criminological knowledges" can have the unfortunate consequence of marginalizing vital criminological research endeavors.

White collar crimes studies undoubtedly add to the breadth of criminological inquiry. To omit or limit its representation within the field de facto is to distort its representation and potentially miss new ways of understanding not only white collar crimes, but traditional street crimes, as well. For example, in the *NW3C 2010 Victimization Survey*, the authors put forth a compelling argument that while ample data exist to support the historic declines in violent and property crimes over the past two decades, many measures of the most serious white collar crimes demonstrate an increase.

Huff et al. (2011) hypothesize that such a high rate of white collar crime victimization coupled with decreasing rates of most conventional crimes may very well indicate that (at least with respect to property crimes), offenders may be migrating away from more traditional street crimes to committing more white collar crimes. Such inquiries would absolutely necessitate "integrating criminologies" as Barak (1998) first advocated in his introductory theories of crime text nearly 15 years ago and reaffirmed through actually attempting to integrate these disparate knowledges more recently (Barak 2009).

The significance of such underrepresentation creates a cyclical dilemma for the CCJ disciplines whereby WCC scholarship is only minimally conveyed to undergraduate and graduate students in their courses, texts, and journals, which in turn impacts the white collar crime knowledge base and future entry into this essential subfield of study. If one thinks of the discipline of medicine in the U.S. as an analogous example, if public health was similarly marginalized in medicine, and scant attention was paid to the leading causes of preventable individual risk factor deaths like smoking, high blood pressure, or obesity (Danaei et al. 2009), or occupational and environmentally related deaths like air, land, and water pollution, or preventable medical errors and hospital acquired infectious diseases, as well as occupational diseases contracted on the

job, public health would be significantly less relevant than it is today.

The classification of smoking and obesity in most of the medical literature as “individual-level risk factors” speaks to the authors’ point about the need for multidisciplinary/holistic approaches to broad research areas. For example, over the past few decades, public health research has broadened its scope to study the impact of environmental pollution on human health. In doing so, this body of scholarship has grown the medical literature beyond solely individual, micro-level variables and analyses to incorporate macro-structural harms (e.g. air, water, and land pollution) that work synergistically upon human health.<sup>7</sup>

Similar to the advances in public health the evolution and continued development of white collar crime studies has dramatic and far-ranging potential for informing and influencing public policies on topics as diverse as our environment, worker safety and health, food security and safety, commerce, trade & finance, transportation safety, health and human services, housing and urban development, defense, domestic/foreign policy, globalization, and human rights. Corporate and state crime scholars in particular have provided much needed research on several of these topics including human rights violations (Greenfield 2008; Hagan and Ryman-Richmond 2008; Kauzlarich and Kramer 1998), criminal law violations of air, land, and water Acts (Burns et al. 2008; Gibbs and Simpson 2009; Jarrell 2007; Stretesky and Lynch 2011; White 2012), highway traffic and safety violations (Burns and Lynch 2002), occupational/worker safety violations (Almond 2008; McGurrin, Arnold and Covelli 2008; Tombs 2007); food safety violations (Reese 2006); and financial law violations (Barak 2012; Black 2010, 2005; Pontell 2011), to name a few.

Criminology and criminal justice have much to offer in expanding, integrating, and even challenging “preferred knowledges” of white collar crime studies. Academic disciplines ranging from sociology, law, and political science to heterodox economics, business, industrial labor, environmental science, and public policy are all fields whose white collar scholarship would be augmented from criminological theorizing, analysis, and understanding. Legislators, regulators and enforcers, corporations, and businesses need to appreciate the causes, correlates, and effects of white collar crimes as well as the serious physical and financial harms associated with these offenses; criminologists have a unique and critical role to play in informing and shaping WCC public policies and they need the support of the criminology and criminal justice disciplines to accomplish these objectives.

To this end, criminology and criminal justice journals can more frequently call for “special issues” on white collar crime as *Criminology and Public Policy* did in 2010 and *Western Criminology Review* has done in this current (August 2013) issue and the *Journal of Contemporary*

*Criminal Justice*, did in their summer 2013 issue. One promising development in 2012 was the Bureau of Justice Statistics call for research proposals for its *Federal White Collar Violations Statistical Series and State and Local White Collar Crime Program*, respectively. A rarity in terms of federal funding, these grants, if sustained, have the potential to provide incredible opportunities for white collar crime researchers in the future.

Additionally, we encourage CCJ journals to more routinely integrate WCC scholarship by examining the distribution and topical areas of coverage to ensure that core areas of the discipline are being adequately represented. As noted previously in the limitations, it would be useful if editors adopted a standard and uniform tracking policy across editorships to determine where the advocacy efforts are best placed. And, while a dedicated white collar crime journal would likely advance WCC studies in the same way that the journals *Violence Against Women* and *Feminist Criminology* further elevated the profile of feminist criminological scholarship, we would simultaneously encourage both authors and editors to work toward the goal of increased white collar crime scholarship in mainstream journals, and particularly top criminology and criminal justice journals.

For textbook authors, editors, and publishers, we state simply but definitively that greater exposure to white collar crime at the undergraduate (and graduate) levels would very likely increase the number of students interested in studying and researching white collar crime at the doctoral level. When the first two authors attended their doctoral program at a large urban research university in the late 1990s and early 2000s, only one white collar crime course was offered by a single faculty (of nearly two dozen) who specialized in this area. While the number of CCJ doctoral programs and those offering white collar crime courses have both grown comparably over the past decade, the CCJ departmental profile of one or even no white collar crime scholars and courses is still the norm in most Ph.D. programs. Collectively, even modest increases in these areas could markedly improve current white collar crime representation in all core areas of the criminology and criminal justice disciplines.

## Notes

<sup>1</sup> The concept of harm is central to any discussion of white collar crime and deviance definitions, as not all white collar offenses are criminally codified. For a primer on the topic, see Holtfreter (2005).

<sup>2</sup> International crimes and cybercrimes (non-white collar) were added to the current study as more scholarly coverage of these categories over the past decade warranted their inclusion.



<sup>3</sup> Most UCR Index Crimes in our study were Part I offenses which contain violent and property offenses exclusively. Infrequently, Part II white collar offenses were addressed in the criminology literature and coded under the appropriate white collar crime category.

<sup>4</sup> Friedrichs is widely regarded by white collar crime researchers as one of the most influential contemporary white collar crime scholars and typologists. His WCC conceptual schemas are routinely referenced by white collar crime researchers in their classification discussions.

<sup>5</sup> As queried by one reviewer, the current study did not include “environmental crime” as a *separate* WCC category in keeping with Friedrichs’ typological schema. Environmental crimes were incorporated under the umbrella of corporate crime, which Friedrichs sub-classifies as corporate violence against the public. For a distinct analysis of environmental crime research in the criminological literature, see Zilney, McGurrin and Zaran 2006.

<sup>6</sup> The concept of a journal’s impact factor is used to assess a journal’s influence on the field and is typically based on the average number of times its articles have been cited in all other journals over a two year period. The journal impact factor and the journal’s ranking, which is based on its impact factor, for *Crime, Law, and Social Change* was obtained from Red Jasper’s Journalranking.com (2012) and the journal impact factor and ranking for *Social Justice* was located in Sorensen’s (2009) “An Assessment of the Relative Impact of Criminal Justice and Criminology Journals.” Given the two year rolling metric, these values and, therefore, ranking can vary every year.

<sup>7</sup> Integration of theoretical perspectives that address different levels of analysis from micro- through meso- to macro- has been advocated in the analysis of school violence, which not only shifts the focus from the individual student’s psychology and personality development, but also includes interactive school processes, school climate, school organization, school board budgeting, educational policy and the wider societal processes involving community and neighborhood social ecology, mass mediated violence, gender and masculinities, American gun culture and the punitive justice system; all of which are implicated in the causal nexus that produces incidents of school violence (see Henry 2009; Henry and Bracy 2012; Hong et al. 2011).

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## Appendix A: Criminology and Criminal Justice Journals

<i>Criminology</i>
<i>Justice Quarterly</i>
<i>Journal of Research in Crime and Delinquency</i>
<i>Law and Society Review</i>
<i>Journal of Criminal Law and Criminology</i>
<i>Crime and Delinquency</i>
<i>Criminology and Public Policy</i>
<i>Journal of Quantitative Criminology</i>
<i>Theoretical Criminology</i>
<i>Criminal Justice and Behavior</i>
<i>Social Justice</i>
<i>Crime, Law, and Social Change</i>
<i>Canadian Journal of Criminology</i>
<i>The British Journal of Criminology</i>
The Journal of Criminal Justice

## Appendix B: Introductory Criminology and Criminal Justice Textbooks

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**Amber Jahn** is a 2012 graduate of the Criminology and Criminal Justice Master's Program at Portland State University. Amber successfully defended her master's project, "Looking into the Past to Improve the Future: A Content Analysis of White Collar Crime Scholarship Between 2001-2010," chaired by Dr. Danielle McGurrin and Robert Lockwood, JD. This project was an outgrowth of nearly 5,000 journal articles collected (with Brandy Cochrane) for "White Collar Crime in the Criminological Literature Revisited" co-presented at the American Society of Criminology conference in November 2011. Currently, Amber is residing in Sydney, Australia where she is employed as a research analyst with a professional development company.

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## Theft of a Nation Symposium: Introduction

Danielle McGurrin  
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In the fall of 2012 I attended a lecture at Portland State University's Economics Seminar Series given by the highly regarded heterodox political economists and authors of *The Making of Global Capitalism: The Political Economy of American Empire*, Sam Gindin and Leo Panitch (2012) of York University, Canada. The presentation, like the book, was expansive, thorough, and richly detailed on multiple levels. As the historical discussion invariably arrived at the subprime mortgage crisis that began in 2007, and subsequent economic meltdown in 2008-2009, curiously, one essential component of the authors' analyses was missing: how did *financial crimes, particularly fraud*, contribute to the Great Recession—the largest economic recession since the Great Depression? That was the question posed to the authors and to which I anticipated a similar level of depth, complexity, and rigor that had characterized their prior analyses. The authors responded by asserting that they did not believe fraud had played a significant role in the current global financial crisis. Moreover, they argued that worldwide, several dozen similar, albeit smaller, economic crises over the past two decades collectively underscored the cyclical and expected vagaries of U.S. and global financial markets.

This not uncommon economic response might have been expected if posed to classical liberal economists. In fact, the nation's leading expert on financial regulatory laws and enforcement, Bill Black writing with Henry Pontell, recently made such an argument in "White-Collar Criminology and the Occupy Wall Street Movement" (Pontell and Black 2012). The fact that neo-classical economists trivialize financial crimes and fraud, in particular, is perhaps no more surprising than the marginalization of white collar crime by mainstream criminologists. These noted political economists, however, are Marxian scholars—Leo Panitch is editor of the *Socialist Register* and Sam Gindin is a former chief economist for the Canadian United Auto Workers. The

theoretical and philosophical analyses of these prominent and influential economists are relevant to this symposium dedicated to Wall Street financial crimes for two reasons. First, as noted by Pontell and Black (2012), economists play a key role among social science scholars in formulating governmental regulations and financial policies. Second, they exemplify the breadth and depth of disregard (in both academic and policy arenas) encompassing the overwhelming evidence linking both corporate crime and malfeasance with governmental mal-, mis-, and non-feasance to the current economic crisis.

So what exactly are finance crimes? Finance crimes are "the large-scale illegalities...committed on behalf of major financial institutions or individuals occupying financially privileged statuses, including violations of banking Acts, bribery, fraud, tax evasion, money laundering, insider trading, predatory lending, and other deceptive policies and practices" (Friedrichs 2010:190). Because fraudulent activities are so integrally entwined with finance crimes, it is important to point out that despite the often complex elements that comprise these crimes, fraud at its most essential element is simply theft by deception. As it relates to the economic crisis of 2007-2009, which is the focus of this symposium, Wall Street fraud was committed "on a grand scale" by some of the most structurally powerful elite and by the most distinguished financial institutions in our society, with devastating consequences for its multiple victims. Those victims included homeowners, investors, savers, workers, taxpayers, and consumers.<sup>1</sup> Barak (2013) graphically illustrates the economic brutality of this victimization when he reports that globally

[the] Wall Street debacle accounted for more than \$20 trillion in lost wealth...cost some 20 million workers their jobs worldwide...domestically, cost taxpayers \$700 billion in TARP bailout funds.... and between 2007 and the end of 2012, cost some 4 million American households their homes [due] to mortgage foreclosures. (pp. 7, 13)

With these massive victimizations and harms in mind, we can see the human, individual-level consequences and substantial significance of macro-level theorizing and analyses. For example, Friedrichs' (2010:168) critical point that "finance crimes can directly threaten the integrity of the economic system," bares new meaning when Americans personally experienced precisely that following the near national economic collapse in 2008. Despite the magnitude of the costs and the consequences of these harms, and what should be the domain of criminology as the core discipline that specializes in analysis of crime (including white collar crime and elite deviance), little criminological attention has been dedicated to investigating the crimes and malfeasance on Wall Street. As of this writing, a small handful of white-collar criminologists in the U.S. have studied the current financial crisis (Black 2010, 2012; Friedrichs 2010; McGurrin and Friedrichs 2010; Nguyen and Pontell 2010, 2011; Pontell 2010, 2011; Pontell, Black and Geis 2013; Pontell and Geis 2013). Only critical criminologist and integrative theorist Gregg Barak, has taken on, in book form, the challenging task of researching the financial crimes of large investment banks, mega-bankers and mortgage lenders, as well as the governmental policy makers, regulators, and regulations whose interrelated collusion gave rise to the conditions that made the magnitude of this global financial crisis a catastrophe.

In accomplishing this demanding investigative research task, Barak has mined the depths of social history, political economy, and critical legal studies to provide essential interdisciplinary insight informing the study of high finance crimes. The focus of Barak's (2012) research is categorically stated in his book title, *Theft of a Nation: Wall Street Looting and Federal Regulatory Colluding*. It is an unapologetic critical socio-historical, legal, and political economic anatomy of the greatest financial crisis faced by the United States in modern times, and is particularly critical of the subsequent governmental responses. As Barak (2013:3) explains in his commentary and reflections article, "the [book] subject is an examination of the non-prosecution of high-risk securities frauds and the legal contradictions between private banking and the state and state regulation of public banking on behalf of investors and taxpayers." The complexity of the challenge he faced required an examination of 10 years of fraudulent securities transaction data (1999-2009) and a deep understanding of the U.S. banking policies and practices, as well as the structurally contradictory civil, regulatory, and criminal enforcement efforts that served to aid, exacerbate, and extend the length of these illegalities more than they did to curb these illegal and illicit activities.

In recognition of the significance of Barak's contribution the articles in this symposium, by leading critical criminologists and white collar crime researchers, both review the significance of Barak's contribution, but

also use the platform of his work to provide their own interpretation of the crisis and its aftermath. This special issue of *WCR* on white collar crime begins with an article by McGurrin, Jarrell, Jahn, and Cochrane that examines the representation of white collar crime in the criminological literature, specifically criminology and criminal justice journals and textbooks, as well as Ph.D. programs in the United States. The lopsided juxtaposition between widespread and serious harms caused by white collar crimes, on the one hand, and its persistent underrepresentation on the other, frames the thought-provoking and well-crafted commentaries that follow on Barak's *Theft of a Nation*.

Elliot Currie's commentary carefully unveils a dystopian U.S. political economy wherein its key financial institutions are run by (corporate) criminals. Mary Dodge in her commentary centers the study of white collar crime victims and weaves together a detailed portrait of the multiple harms perpetrated against them and both the challenges and promise of using the legal system for redress. Robert Tillman's commentary unpacks how the rapid financialization of our domestic economy over the past two decades facilitated opportunities for both Wall Street criminality and regulatory enabling by an increasingly dependent State. Paul Leighton's thorough and multi-layered commentary couples the paradoxes of our dominant socio-political and economic institutions that obfuscate the rise of corporate criminality alongside the inextricably linked growing class inequality and diminishing attention paid to it. Finally, Michael J. Lynch employs a Marxist structural analysis to showcase the linkages between finance crimes and the exploitation of its victims in relation to other corporate and environmental crimes that exploit and harm victims, not only undermining their health, but also the habitats and ecosystems of plants, animals, and all living species in the natural world. Collectively, these essays highlight multiple dimensions of white collar criminal offending and victimization as well as their costs and consequences. Most importantly, their insights, analyses, and recommendations remind us how central white collar crime studies are to our understanding of criminology, criminal justice, and social justice.

## Notes

<sup>1</sup> For a detailed unpacking of Wall Street's white collar crime victims see McGurrin and Friedrichs (2010)

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## An Economy Run by Criminals: Reflections on Gregg Barak's *Theft of a Nation*

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Gregg Barak's (2012) *Theft of a Nation* is an important, and sobering, addition to the accumulating body of critical scholarship on crime and punishment—or the absence of punishment—in the financial sector of the United States economy. It's a compelling indictment of the long history of what he calls "looting and colluding" by the private financial sector and the public agencies ostensibly devoted to controlling it, and is particularly strong in its description of the economic and political forces that underlay the emergence and maintenance of the great financial crisis of the last few years.

Let me preface my comments on *Theft of the Nation* by acknowledging that I'm not by any means a specialist on white-collar crime generally, much less on financial crime specifically. I come at these issues from the perspective of a criminological generalist, and of course as a citizen, but necessarily as a relative outsider. So my "take" on the meaning and implications of the situation Barak incisively describes may be a little different from those of scholars who have studied the issues more closely. The way this manifests itself is that I find myself, as a relative outsider to the study of financial crime, coming away from this book with a "take away" message that is, if anything, even more dire and more troubling than what Barak—as well as other recent writers like Henry Pontell, William Black, or Tomson Nguyen—suggests.

What strikes the relative outsider most powerfully in this body of work is the sheer magnitude and pervasiveness of the criminality that it describes. It isn't surprising, particularly for those of us who are not exactly enthusiastic supporters of the drift of modern-day corporate capitalism, that there is a great deal of predation and law breaking among the people who control the highest levels of the American (and global) financial system. But what I take away from Barak's work in particular is the sense that predation at the highest levels of

that system is not merely pervasive, but for all practical purposes universal. That is, just about *every* major financial institution in the United States – and perhaps increasingly the rest of the world – has engaged in at least some illegal and/or corrupt practices at least some of the time over the last several years.

And what this means is that we have to accept the shocking realization that the commanding heights of our financial system are controlled by criminals. It's not just that there are a lot of crooked people in high places, but that this system that controls and directs the resources that are the lifeblood of the American and world economies is controlled, and its most important decisions dictated, by people who are criminal not merely in some rhetorical sense but in an absolutely literal one.

That astonishing reality and its profound implications are, I think, often obscured in the recent specialized literature on financial crime. This isn't the fault of the scholars who do this indispensable work. There is a way in which – again, at least for the outsider – the subject is intrinsically so complex, the array of regulatory agencies and relevant legislation so dizzying (not to mention the complexity of the financial instruments through which much of the recent predation has been facilitated) – that these issues can be mind-numbingly difficult to follow. It's easy to get lost in the details. That's especially true for someone like me, who never once had the slightest desire to become a banker or a hedge fund manager, in part because the whole subject of finance is thoroughly mysterious to me. It can be especially perplexing to try to sort out the different kinds of collateralized debt obligations, or the alphabet soup of past and present regulatory agencies and laws. And so it's easy to lose sight of the forest—not just for some scholars, but, I suspect, even more for most of the public. Again, I'm not blaming Gregg Barak or other recent writers on financial crime for

that problem; on the contrary, I give them great credit for having the patience and skill to sort through all of this technical detail for the rest of us. But I do think that the inherent complexity of the issues means that we have to step back from the particulars in order to see the bigger picture. And when we do that, the picture we see raises profound and dismayingly difficult questions for those of us who seek to create a better society in the United States and the world, and who want to maximize the possibilities for human well-being and social justice.

Let's ask ourselves for a moment what it means to live in a society whose financial institutions are essentially run by criminals. What are the consequences for all of the things that we value – social solidarity, productivity, material well-being, civic values – of living in a society where the commanding heights of the economy are held by people who, pretty much by definition, are out for their own interest and care not at all for the human consequences of their actions? I'd say there are many of those consequences, but let me just point to one that I think is especially important: the way in which a criminally-driven financial sector exacerbates the larger tendency of contemporary capitalism toward the massive diversion of economic resources from productive human purposes, and the consequent slowing or even reversing of the progress that our technological capacity should make possible.

One of the most significant questions of our time is what happened to the supposed march toward affluence that scholars as far back as the 1950s thought was upon us? More than half a century ago, at a time when the American economy was far less productive than it is today, such was the belief in the imminent coming of genuine abundance that pundits worried --not about the need to tighten our belts--but about what we were going to do with our unprecedented material resources and with our newly expanded leisure time. Some of those pundits believed that poverty was on its way to becoming a marginal phenomenon – what John Kenneth Galbraith (1958) called “case” poverty, an affliction of a relative handful of maladjusted individuals within an otherwise affluent society.

It hardly needs pointing out that, if we flash forward to today, we encounter an entirely different, indeed almost reversed, social and economic vision. The language of economic scarcity is back with a vengeance, and austerity is the social and economic strategy of choice – in a global economy where it is presumed that there are not *enough* resources to support the expectations of the past.

So the obvious question is: what happened to derail the expected trajectory toward affluence? How was it that we wound up losing so many of the fruits of the increased productivity that seemed to promise a very different future than what we face now? Well, I think a big part of the answer is that the march toward affluence has been hijacked. And one aspect of that hijacking – though by no means the largest part of it – is the massive diversion of

economic resources (and potential resources) through outright financial crime. In other words, part of the answer to the question of what happened to the expected economic surplus from our ever-increasing productivity is that it was stolen.

If that sounds overwrought, let's think for a moment about the magnitude of the looting that *Theft of the Nation* describes. No one claims to have a precise estimate of exactly how much of our society's wealth is siphoned off or destroyed as a result of private sector financial crime and the government collusion which Barak charts in such detail. But no one who has studied this doubts that the sums are enormous. The usual figures are not in the billions but in the hundreds of billions and even trillions over the past few years. Let's, just for the sake of argument, take as a rough yardstick that we may lose something in the neighborhood of \$1 trillion every year, in a variety of ways, as a result of financial crime. We lose it in ways that are themselves enormously complicated and that also serve to obscure both the nature and the extent of that diversion. We lose it in the vanishing of wealth that unlucky homebuyers during the mortgage crisis once thought they had in their homes. We lose it in the public tax money that goes, in many and complex ways, to bail out and prop up the financial institutions that are deemed too big to fail – a process that Barak discusses in ways that are extremely illuminating. As many commentators have shown, this public largesse isn't confined to formal bailout funds, some of which do indeed get paid back by the financial institutions that receive them. As Matt Taibbi (2013) recently documented in a compelling article in *Rolling Stone* magazine, those sums are only the tip of the iceberg-- and are potentially dwarfed by other subsidies that are much less transparent and much more difficult to track. We lose precious economic resources through theft in many other ways as well, but let's reflect for a moment about what it means to say that we may lose \$1 trillion a year to financial crime.

One way to think about this is to envision what *else* we could do with those trillion dollars. The magnitude of this loss is put into some perspective when you put that figure of \$1 trillion up against some of the most contested categories of the federal budget. Thus, the entire budget for benefits under the TANF (Temporary Assistance to Needy Families) program in 2009 was approximately \$10.5 billion, and the entire federal expenditure on the program—what passes for our central income support effort for poor families—is a little over \$30 billion, including administrative costs and everything else.

Or consider job creation: suppose that it takes roughly \$100,000 overall to create a solid, socially useful entry-level job that pays a living wage, once we include benefits, necessary training costs, and other expenses in addition to wages. That means that every \$1 billion of investment in direct job creation can create 10,000 jobs. \$100 billion can create 1 million of those decent, socially useful entry-level

jobs that can provide a ladder upward into a life of dignity and contribution. And \$1 trillion could provide 10 million of them, thus wiping out a very significant proportion of the country's current unemployment and sub-employment.

Or consider that the average income deficit of poor families in the United States is currently about \$9,600--in other words, it would take about \$9,600 to bring the average poor family in the United States up to the poverty line. That means that it would cost a little under a million dollars to bring a hundred American families up to the poverty line; every billion dollars would bring 100,000 families to that level. Ten billion brings a million families up to the poverty line. You do the math: there are roughly 9.5 million poor families in the United States. We could therefore officially eliminate family poverty with an annual expenditure that is only a fraction of what financial crime may be costing us. That would also remove the social stain of widespread extreme poverty in the United States, whose magnitude now unfavorably distinguishes us from every other advanced industrial society in the world.

Again, I'm just playing with the possible numbers here, for illustrative purposes. But the point I want to make is that when we are talking about sums on the level of those that we can credibly say are lost due to financial crime, we are talking about the diversion of amounts of resources that are so large that if we were to retain and redirect them we could transform some of the most pressing and entrenched social problems in America. That's not, of course, to say that we *would* actually use that money in socially constructive ways if we had it—if we didn't lose it to financial predation. But it does illustrate both the startling magnitude and the potential social significance of the problem of resource diversion as a result of financial crime.

And the magnitude of resource diversion – the sheer size of the sums involved in the looting that Barak describes – coupled with its near universality at the highest levels of the financial system also forces us, I think, to confront the extraordinary difficulty of doing anything about it within any of the conventional frameworks of reform or “re-regulation” that are currently on the table. To me, again speaking as a relative outsider to this field, it often seems that there is a gap between the descriptions we're given of the extent and nature of financial crime, and the proposals put forward to control it: the proposals for reform of the financial system tend not to match the staggering implications of the analysis of the problem. Again, the picture that Barak paints of the extent of private sector financial looting and the hapless and timid—or actively collusive--response of the regulatory agencies is extraordinarily grim. And it raises the issue of agency – that is, agency for social change—in a particularly thorny way. Who is going to make the changes that all serious observers believe need to be made? Who has the capacity to make the private financial sector even remotely honest—or even minimally compliant?

It seems abundantly clear from Barak's analysis and those of others that we can expect very little serious self-regulation from the private sector actors themselves: that's a little like expecting street drug dealers to infuse their operations with keen principles of social justice and service to the community. The hard reality is that no one operating with the impunity that our chief private financial actors enjoy in the United States is going to voluntarily give up a racket as lucrative as the one they're now in. So who will make them do it? As Barak shows, successful re-regulation of a crooked and powerful private sector in the service of productive social ends is unlikely to come from a fragmented and under-resourced (conveniently under resourced, as Barak correctly notes) regulatory sector that is at best relatively powerless in the face of the size and might of the global private sector, and at worst is actively in cahoots with them. When the nation's chief law enforcement officer, Attorney General Eric Holder, openly admits to Congress, as Andrew Ross Sorkin (2013) of the *New York Times* recently reported, that a number of the biggest American financial institutions are simply too big to prosecute – even if we know they've committed egregious violations of the law—you know that even the best of the public authorities have pretty much thrown in the towel.

This means that some of the discussion in Barak's concluding chapter can seem a bit tentative and undeveloped by comparison to the sweeping and detailed indictment that's come before. Barak cites extensively from recent work of the economist Robert Shiller, of Cornell University, who writes of the need to “democratize and humanize” the financial sector. But it's not easy to see who has the power to ensure the implementation of even good ideas about the democratization and humanization of the financial sector--if it's in fact mainly run by people who have enormous economic power, who can use that power with little interference, and who apparently have virtually no concern for the long-term consequences of their behavior for the economy and the larger society. Barak appeals at one point in this concluding chapter to the economic rationality of controlling the excesses of financial sector greed: measures to restore equity in people's homes that are now underwater, for example, can put money in the pockets of people who are now so strapped that they can't contribute anything to the economy. That's certainly true--but almost by definition it may mean nothing to financial criminals in high places who really don't care about the current health of the local, national, or global economies, much less what those economies will look like in the generations to come.

I think the weight of the evidence Barak assembles in *Theft of a Nation*-- coupled with that assembled by other recent writers on financial crime-- points inexorably to two related ideas. One is that the needed change has to come from below. We're not going to get anything approaching serious control of the American financial system without a

mass progressive movement that not only reconfigures the personnel in Congress but that also is willing to challenge the most basic rules that now govern the American financial system. The second is that we won't get anything approaching an honest and socially constructive financial system as long as it remains largely private. Barak, very importantly, brings up the radical possibility of the public taking over the commanding heights of finance in the postscript to *Theft of a Nation*, but I wish the discussion wasn't confined to a few lines in a postscript. My reading of Barak's analysis in the preceding 165 pages is that it's illogical to believe that we will ever get socially conscious investment of the nation's, and the world's, vast resources as long as the institutions where the decisions about that investment are made are run by people who at best – even if they're not flat-out lawbreakers – have shown themselves to be incapable of thinking about social ends or long-term consequences.

Barak usefully points to a number of examples, both in the United States and abroad, to suggest that nationalization, or the development of strong public banking institutions at the state level, is a potentially fruitful way to go. I'd go farther – I think it may well be the *only* way to go. And I hope that, having charted, in such illuminating detail and with such deep moral concern,

the extent and magnitude of the looting of America by the private financial sector, scholars will now turn their attention toward helping us understand the outlines of a credible public alternative to the current financial apparatus, and helping us create a roadmap of how to get there through strategic political mobilization.

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## The Importance of Integrating Victimology in White-Collar Crime: A Targeted Comment on Barak's Analysis in *Theft of a Nation*

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My first reading of *Theft of a Nation* was last year when Gregg Barak was awarded the 2012 outstanding publication from the National White Collar Crime Center (NW3C). The nomination of the book received by NW3C's Research Consortium gave high praises to the work—with good reason. Barak's important contribution reminds of us of the disturbing reality of the ongoing, often ignored, blatant financial crimes occurring at troubling rates nationally and globally. While Barak addresses the complexity of financial wrongdoing and regulation, or lack thereof, in an insightful manner, I chose to focus this commentary on his analysis of victimization. In early research, white-collar crime literature decried the vast and unknown financial, physical, and emotional harm to victims as the greatest travesty, yet with little acknowledgement of victimology. Barak and other prominent scholars, to their credit, are attempting to improve our understanding of victimization by focusing on the target of the harm beyond macro-level social constructs and vague damage estimates (see e.g., Ganzini, McFarland, and Bloom 1990; Lewis 2010; McGurrin and Friedrichs 2010; Szockyj and Fox 1996).

Barak accurately notes the difficulties of separating individualized and organizational victimization, particularly related to the Wall Street financial meltdown. The widespread nature of victimization includes all levels of society without regard to age, race, ethnicity, socioeconomic status, or gender. In other words, white-collar crime creates a status of vulnerability for a wide and diverse group of citizens.

Barak identifies the victims of white-collar crime as the entire spectrum of the population. The characteristics of the victims of financial crime move beyond traditional views of criminal behavior and victimization associated

with street-level offenses as committed primarily by and toward the disenfranchised. Barak initially focuses attention on race and poverty, variables seldom recognized in most financial cases, with the exception of environmental pollution and, in some instances, the mortgage crisis.

His application of the "weathering framework" and resulting stress, though thoughtful, creates complexities, such as social level changes, that are seemingly impossible to overcome in terms of improved programs and policies designed to assist and compensate victims of white-collar crime. The weathering framework, according to Barak, was developed to "measure the rates of aging that link social inequality, racism, and biology to socioeconomic and racial/ethnic group victimization" (p. 115). Barak argues financial fraud victims' experiences are similar to institutionalized victims; all of who face racism and gender bias. How to make sense of this approach at a policy level may puzzle the most thoughtful legislator, though as Barak notes, blaming the victim under the guise of capitalism and free markets ignores the social and cultural aspects of fraud.

The noted lack of criminal prosecution in cases of financial crime is reminiscent of the Sutherland and Tappan debate in which a major hurdle to reducing victimization and organizational misbehavior stems from the fact that such practices are more likely to be labeled as civil wrongdoings or regulatory violations, than criminal behavior. Clearly, any attempt at prosecution in cases as widespread as the Wall Street financial crisis may be viewed as folly on the part of federal prosecutors, and large monetary settlements appear to placate a small portion of the victims.

As Barak indicates, the identification of a victim should be a relatively easy task, although this is seldom the case in white-collar crimes because of the socio-legal traditions as well as political, economic, and cultural values that are enmeshed in constructing the role of the victim (p. 117). Additionally, victim rights measures already in place for traditional street crimes, rarely apply to suite crimes. The recourse, as suggested by Barak, is civil lawsuits. The pitfalls in civil cases, despite the lower burden of proof, are numerous. The high cost of legal representation, the investment of time away from work and family, and the ridiculous notion that class-action lawsuits will result in adequate compensation for losses, represent major obstacles. Despite the strong points made by Barak about the value of civil litigation, only a small number of individual victims will seek such recourse or prevail. In contrast, organizational victims present a stronger front financially and legally, though restitution is unlikely to help victims who have lost their homes, retirement funds, and investments.

Settlements with federal agencies offer some sense of restitution to victims of financial crime. In April 2013, news sources reported an agreement among federal agencies and some of the largest banks in the United States designed to compensate the millions of Americans who “allegedly” were targeted in wrongful foreclosures during the housing crisis. I use the term allegedly because these types of settlements typically place no guilt on the offending parties and no admission of criminal conduct. Bank of America, JPMorgan, Chase, Wells Fargo, and Citigroup, for example, agreed to pay \$9.3 billion in cash and in reductions of mortgage balances. A total of \$3.6 billion will go directly to borrowers who lost their homes or faced foreclosure. The 4.2 million victims will receive payments ranging from \$300 to \$125,000 as compensation. The settlement provides researchers with an opportunity to examine the “worthiness” of a diverse group of individual financial victims. Research exploring their perceptions of whether or not justice was achieved, or if restitution represented adequate compensation, may add a substantial framework for understanding victims of financial fraud. The quantitative and qualitative research possibilities are tantalizing to white-collar criminologists, though access to data collection, I suspect, would be a grueling and perhaps impossible task. On a positive note, in 2013, the National Institute of Justice released a solicitation for research and evaluation on white-collar crime that encourages a wide range of research.

Many scholars have noted the lack of a systematic collection of data related to white-collar crimes, including victims; though the National White Collar Crime Center conducts surveys to measure public opinion and address some victimization. The National Crime Victimization Survey (NCVS), however, offers little or no insight into financial victimization. Callie Rennison, a leading expert on the NCVS currently working with the Bureau of Justice

Statistics noted: “The NCVS focuses on crimes against individuals - both property and personal (including violent) crimes and does not measure crimes against businesses” (Rennison, personal communication 2013). Nor does it measure crime victimization by businesses against individuals or against other businesses and organizations. Rennison also explained the difficulties of specific identification of crimes such as embezzlement and cybercrime:

The NCVS is not a good source for information on white-collar crimes. We do not gather information on embezzlement per se, though this act may be captured under the heading of robbery and difficult to parse out. Also, while we do gather information on some forms of cybercrime, it is for crimes against individuals only (theft of credit card numbers and hacking, for example) (Rennison, personal communication 2013).

Additionally, the National Incident Based Reporting System (NIBRS) failed to live up to the promise of offering a more complete database on white-collar offenses.

While some efforts are made to identify and aid victims of fraud, in many cases victims are unwilling to report such offenses because of feelings of shame, embarrassment, and self-blame (Button, Tapley and Lewis 2013; Shover, Coffey and Hobbs 2003). Kempa (2010), for example, identified one million adult victims in Canada who lost money to investments frauds. The victims reported high levels of stress, anger, depression, and isolation to the Canadian Securities Administrators. My own explorations of women and white-collar crime suggest a disparity of victimization between men and women with the latter disproportionately harmed by unsafe drugs and medical devices (Dodge 2009). Women also are widely recognized as victims of a vast array of corporate transgressions (Simpson and Elis 1996). Any definitive claims, however, about victims of white-collar crime are nearly impossible to make given the lack of data (Geis 1975; Gerber and Weeks 1992).

Victimization in white-collar crime conjures up public perceptions not unlike the archaic notions of rape--they knew the risk and got what they deserved. In fact, victims experience many of the same emotional strains including feelings of violation, stress, and anger (Button, Lewis, and Tapley 2012). Victim typologies offer little assistance in the field of white-collar crime. As David Friedrichs commented: “All of us are victimized, in many capacities, by white collar crime,” (2010, p. 53). The development of typologies, which currently are nonexistent for victims of white-collar crimes, is ignored for many reasons. First, most efforts to research victims often focus on consumers, particularly vulnerable populations. Second, the difficulties of establishing an operational definition for white-collar crime inhibits attempts to identify victims, especially given

we are all victims. Third, victimization often is diffuse, unintentional, and indirect (Friedrichs 2010). Clearly, fraud victims and more widespread corporate victimization are ignored in the literature (Kane and Wall 2006; Levi 2008; Shichor, Sechrest, and Docey 2001; Shover, Coffey, and Hobbs 2003). Barak's list of groups that have suffered harm without establishing victim status is overwhelming (p. 124) and case examples of victims of the Wall Street securities fraud who pursued legal remedies face, in many cases, insurmountable hurdles. The obstacles may strain emotional and financial resources given the difficulties involved in litigation.

Indeed, these are the "neglected victims" in the research and the criminal justice system (Moore and Mills 1990), though some measures are being put in place to offer assistance. In the United Kingdom, for example, the "fraud justice network" initiated by the National Fraud Authority appears to offer some respite for fraud victims (Button, Tapley, and Lewis 2013). Despite some inroads into assisting individual victims of fraud, investigation and compensation are unlikely to represent sufficient effort to address the needs of fraud victims. In this respect, Barak delivers both good and bad news in his 2012 essay in *The Criminologist*. On the positive side, he details the success of the Corporate Fraud Task Force touting the convictions of 1,236 corporate fraud cases. On the negative side, the overblown rhetoric of Attorney General Gonzales neglected to summarize the acquittals, hung juries, and court reversals (p. 3). Operation Stolen Dreams, for example, initiated by the U.S. Attorney and several law enforcement agencies targeted mortgage fraudsters. This effort included 1,517 criminal defendants and 191 civil actions. The estimated losses were over \$3 billion and \$196 million was recovered. Unfortunately, the amount recovered in this case is absurdly small and details about the final financial disbursements amounts are elusive including what portion bailed out banks and the amounts paid to victims.

Overall, Barak's *Theft of a Nation* offers a comprehensive perspective on victimology and white-collar crime, which is portrayed throughout the book. Whether or not it was his intent, he successfully reminds us of the harm and distrust that has become deeply rooted in our social reality. The devastation and direct harm caused by the Wall Street looting and lack of regulatory efforts exemplifies victimization, and as Friedrichs (2010) articulately argues we are all victims without the status.

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## Too Big to Jail

Robert Tillman

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Gregg Barak's (2012) *Theft of a Nation* attempts to solve a mystery that has puzzled many observers of the financial crisis that began in 2008: Why have so few of those responsible for the fiscal crisis—executives and officers at investment banks and mortgage lenders, in particular—been charged with crimes? The explanation Barak offers centers on the existence of a "banking cartel" that consists of the major Wall Street investment banks which "along with its political allies pretty much control what does or does not constitute securities violations in the world of fraudulently based market transactions" (Barak 2012:6). This cartel is able to maintain its dominant position because of a collusive relationship with key political actors who both set the regulations and standards that govern banks' operations and who determine when and to whom criminal sanctions will be applied.

The idea that there are close ties and interests that bind Wall Street and Washington is not new, but Barak's analysis locates this connection within the broader framework of critical criminology and Marxist informed theories of "crimes of capitalist control." For Barak, the failure to hold those responsible for the crisis accountable is symptomatic of a larger contradiction in advanced capitalist societies in which the "dominant interests and behaviors of the political economy are both illegal and controlling" (2012:92). This contradiction becomes apparent when legal institutions are confronted with evidence of widespread corruption and fraud at the highest levels of the financial system and find themselves "in the contradictory position of both trying to chastise and to excuse these violations" (Barak 2012:92). For regulators and prosecutors, one way out of this contradictory position is to avoid the imposition of criminal penalties on malefactors (both individuals and organizations) and instead rely on civil sanctions as part of a conciliatory strategy that seeks to "control the damage done to the faith

of Wall Street investors in the financial system" (Barak 2012:96).

In this essay, I want to build on Barak's analysis to explore further some of the factors that lie behind the government's response to the financial crisis. My goal is not to refute his argument but to suggest an additional dimension to the factors that have shaped this response. I will suggest that in addition to overt collusion between government agencies and investment banks, the increasing predominance of financial institutions in the U.S. economy, as well as the economies of other countries, has created barriers to the application of criminal sanctions to those responsible for the financial crisis. The result has been policies that place a higher priority on the continued operation of the existing global financial system than on either the development of an alternative fiscal structure and/or the prosecution of guilty parties.

### **ECONOMIC DEPENDENCE AND POLITICAL RESISTANCE TO SANCTIONS**

Barak's analysis draws not only on Marxist traditions in the social sciences but also on populist critiques of American society that go back to at least the early 20<sup>th</sup> century when Louis Brandeis warned of a "financial oligarchy" consisting of banks, trusts, and railroads that controlled much of the economy (Brandeis [1914] 1971). More contemporary versions of this critique can be found in the writings of journalist Matt Taibbi who has warned that "America...is fast becoming a vast ghetto in which all of us...are being bled dry by a relatively tiny oligarchy of extremely clever financial criminals and their castrato henchmen in government..." (2011:33). While there is certainly more than a kernel of truth in these populist narratives, the situation may be even more complicated

than they suggest. The contemporary financial crisis and the apparent failure of the state to aggressively punish those responsible may well reflect structural changes in the American economy.

In the last several decades, the U.S. economy has become dominated by financial industries to an unprecedented extent. As documented by Simon Johnson, by the mid-2000s, earnings in the financial industries comprised over 40% of all domestic corporate profits in the U.S, up from less than 10% in the early 1980s (Johnson 2009:49). As a result of this shift the American economy has become increasingly dependent upon the financial services industry. This dependency is most evident in certain parts of the country. New York is probably the best example. In 2011, taxes from Wall Street firms made up 14% of New York State's total tax revenues (before the financial crisis that proportion was as high as 20%). In New York City in 2010, jobs in the securities industry accounted for 23.5% of all wages paid in the private sector, despite making up only 5.3% of all private sector jobs in the city (New York State Comptroller's Office 2012). This economic reliance on the financial industry has led New York politicians to aggressively defend the industry against critics who seek tighter controls on Wall Street. In 2009, then New York governor David Paterson responded to calls in Washington to limit bonuses paid to executives at bailed-out insurance giant AIG by stating: "At the end of the day, when they shut those bonuses down, they were shutting New York State down. That's where we got our tax dollars" (Blain 2009). New York City mayor Michael Bloomberg took a more novel approach when he argued that efforts to crackdown on Wall Street abuses would inevitably hurt the working class. Referring to the taxes paid by Wall Street firms he told Congressional leaders: "That's the way we pay our cops and firefighters and teachers... If that industry is hurt, it will be people at the lower end of the economic spectrum who will really feel the pain" (Miller 2010).

These statements suggest that one source of resistance to efforts to punish those guilty of financial malfeasance are the political figures who must contend with the potential economic consequences of aggressive crackdowns on corporate crime. The need to avoid economic fallout was cited by former New York Attorney General Elliott Spitzer as a reason for the decision, in 2003, to reach a settlement with Wall Street investment banks that had violated securities laws by issuing fraudulent research reports favorable to their clients in which those firms paid monetary penalties in exchange for an agreement not to pursue them criminally. In response to criticisms of the non-prosecution agreement, Spitzer pointed to the agreement worked out with Merrill Lynch, in which the firm paid a \$100 million fine and escaped criminal charges.

What we are seeking here is to reform the system and restore integrity and driving Merrill Lynch out of business wouldn't have made sense. [If criminal charges had been brought against the firm], [t]hey would have a brokerage house that is under indictment, that if convicted criminally of the sort of behavior that I think we could have convicted them of, would go out of business. (Tillman and Indergaard 2005:250)

In other words, Spitzer acknowledged that Merrill and most of the other firms involved in the settlement were guilty of crimes, but declined to prosecute out of fear of the economic consequences of doing so.

## CRIME CONTROL VS. DAMAGE CONTROL

The fact that prosecutors are often reluctant to pursue organizational defendants out of fear of the economic consequences suggests a situation in which, as Tillman and Indergaard (2005:263) have put it, America is being "held hostage" by corrupt corporations whose executives can operate with a sense of impunity knowing that they and their firms are not only too big to fail but also too big to prosecute and too big to jail. This situation also raises questions about the state's interests and goals in responding to financial crimes. In their book on the savings and loan crisis of the 1980s, Calavita, Pontell and Tillman argue that there the state's primary interest was not in crime control—the pursuit of individual criminal offenders—but rather in "damage control," stabilizing the economy.

The government's response to the savings and loan debacle can be seen, then, as an effort directed less at penalizing thrift wrongdoers for their misdeeds than at limiting damage to the industry, preventing comparable damage in other financial sectors, and containing the hemorrhage of government-insured capital. (1997:136)

There are indicators that in the current governmental response to the financial crisis there are conflicts between those officials who want to focus on crime control and those whose goals are primarily in stabilizing the economy, and that the latter are prevailing. As Barak points out (2012:99-100), early on in the crisis there were tensions between then New York Attorney General, Andrew Cuomo who pushed for more aggressive prosecution and Timothy Geithner, then head of the New York Federal Reserve Bank, who wanted to focus on calming financial markets. In public comments, Geithner, after he became Secretary of Treasury, indicated that he did not believe that criminal activities played a significant role in the financial crisis. For example, in a speech in the

spring of 2012, he responded to a question about the apparent lack of prosecutions by stating:

Most financial crises are caused by a mix of stupidity and greed and recklessness and risk-taking and hope. You can't legislate away stupidity and risk-taking and greed and recklessness. (Reuters 2012)

Geithner's views have been echoed by other high-level officials, including Attorney General Eric Holder who told an audience at Columbia University Law School that his Department of Justice had "found that much of the conduct that led to the financial crisis was unethical and irresponsible. But we also have discovered that some of this behavior – while morally reprehensible – may not necessarily have been criminal" (U.S. Dept. of Justice 2012).

## CIVIL SETTLEMENTS VS. CRIMINAL SANCTIONS

Regardless of whether prosecutorial reluctance has been the result of fear of economic consequences or collusive relationships between Washington and Wall Street, the outcome has been the same: a reliance by government agencies on civil remedies rather than criminal sanctions in the response to financial malfeasance. One of the more insightful points that Barak makes in his book is that the government's response has been characterized by a "non-penal strategy" that has resulted in "conciliatory efforts by the government, namely the SEC and DOJ, to restore institutionalized business as usual..."(2012:96). The use of civil rather than criminal sanctions has allowed the government to give the appearance that something is being done about the crisis without imposing harsh penalties on those responsible.

One can see this same strategy at work in other major financial crime cases. The recent handling of money-laundering allegations against international bank HSBC provides a good example. In July, 2012 the Senate Permanent Subcommittee on Investigations released a blistering report that provided detailed evidence that HSBC had for years been laundering money for drug cartels in Mexico and Asia and had done business with Middle Eastern banks with clear links to terrorist organizations (U.S. Senate 2012). With this type of overwhelming evidence, indictments seemed imminent. Then on December 9, 2012, HSBC announced that it had reached an agreement with local, state, and federal authorities to resolve the case by paying a \$1.92 billion settlement (Silver-Greenberg 2012b). When asked why a criminal conviction against the corporation was not sought, Lanny Breuer, the former Assistant Attorney General for the Criminal Division at the Justice Department in charge of the case, told reporters: "Our goal here is not to bring HSBC down, it's not to cause a systemic effect on the

economy, it's not for people to lose thousands of jobs. The innocent people who would suffer don't deserve that" (O'Toole 2012). The decision not to seek criminal charges in the HSBC case brought quick and harsh criticism from numerous quarters, including the *New York Times*, which published an editorial, excoriating government officials who made the deal.

Federal and state authorities have chosen not to indict HSBC, the London-based bank, on charges of vast and prolonged money laundering, for fear that criminal prosecution would topple the bank and, in the process, endanger the financial system....Clearly, the government has bought into the notion that too big to fail is too big to jail. (*The New York Times* 2012)

Technically, the Justice Department did file criminal charges against the bank but allowed it to enter into a deferred prosecution agreement in which HSBC was able to, in effect, evade criminal sanctions. When a deferred prosecution agreement is entered into the government files charges but agrees not to pursue prosecution for a specified period of time if the defendant complies with an agreed-upon set of conditions. In effect, it is like a period of probation, but the defendant avoids the collateral consequences of a criminal conviction.

## ECONOMIC PATRIOTISM

The HSBC scandal was one of several involving British banks that emerged in the summer of 2012. Another involved the venerable London-based bank, Standard Chartered. Here too one sees politicians rising to the defense of an institution accused of financial crimes. In August, 2012, Standard Chartered, a major international bank that in 2011 generated \$5 billion in profits, was accused by an obscure New York bank regulator, Benjamin Lawsky the head of the state's Department of Financial Services, with violating U.S. laws prohibiting financial transactions with countries like Iran and North Korea (Silver-Greenberg 2012c). Referring to Standard Chartered as a "rogue institution," the regulator sought to revoke the bank's license for moving \$250 billion through its New York branch for Iranian clients and then taking measures to disguise the transactions. To bolster its case, the regulator quoted from an email from one of the bank's executives who declared "You f---ing Americans. Who are you to tell us, the rest of the world, that we're not going to deal with Iranians" (New York State Department of Financial Services 2012:5).

The accusations, coming on the heels of revelations about criminal activity at other major British banks, provoked quick and strong reactions from English politicians. John Mann, a Labour MP, saw in the regulatory action "an increasing anti-British bias by US regulators and politicians aimed at shifting financial

markets from London to New York” (Rushe and Treanor 2012). The mayor of London, Boris Johnson, accused American regulators of “beating up on British banks” and defended the email message quoted above by stating: “I disapprove of the language, of course. But I have to say ...that there seems to be something fine and sound about the underlying sentiment” (Salmon 2012). This defensive posture is no doubt related to the prominence of banks and the financial services industry in Britain in general, and London in particular. In 2007, financial services accounted for 8.3% of the UK’s GDP and 18% of London’s GDP. In that same year, financial services companies and their employees contributed over 40% of all taxes paid in the UK (McKenzie 2009).

Despite the rhetoric, and despite the fact that the bank had been accused of a serious crime, money laundering, Standard Chartered quickly resolved the New York state issue by agreeing to pay \$340 million in return for which it was allowed to continue doing business in the state (Silver-Greenberg 2012a). But it still faced ongoing criminal investigations by federal authorities. In December, 2012 those issues were resolved when Standard Chartered entered into a deferred prosecution agreement with the Department of Justice that allowed the bank to avoid criminal prosecution by paying the government \$327 million (Silver-Greenberg 2012b). While the combined amounts paid by the bank (\$667 million) may seem like a lot, one has to question the deterrent effect of these penalties when one considers that they represented only 13% of the institution’s 2011 profits.

With these examples I want to suggest that one of the explanations for the apparent leniency shown toward institutions accused of financial crimes is the increasing dependence of the U.S. economy, and those of other countries, on the financial services industry for revenue, both private, in the form of wages, and public, in the form of taxes. This situation reflects the growing financialization of the economy, “a pattern of accumulation in which profits accrue primarily through financial channels rather than through trade and commodity production” (Krippner 2005:174). The growing dominance of the financial sector in the economy is also reflected in that sector’s influence on politics. Analyses of campaign contribution data show that “the financial sector is far and away the largest source of campaign contributions to federal candidates and parties, with insurance companies, securities and investment firms, real estate interests and commercial banks providing the bulk of that money” (Center for Responsive Politics n.d.). But the influence of the financial sector on political decision-making is often less direct than the *quid pro quo* suggested by campaign contributions operating instead through cultural channels. As Simon Johnson has put it:

Over the past decade, the attitude took hold that what was good for Wall Street was good for the country....

[the financial services industry] benefitted from the fact that Washington insiders already believed that large financial institutions and free-flowing capital were crucial to America’s position in the world. (Johnson 2009:50)

This viewpoint was evident in the response by the financial community and its political allies to efforts in Washington to tighten control over corporate conduct following the corporate scandals of the early 2000s with laws like Sarbanes-Oxley (which, among other things provided criminal penalties for CEOs who falsified their companies’ financial statements). For example, a report co-sponsored by the offices of New York City mayor Michael Bloomberg and New York senator Charles Schumer made a forceful argument that such reform measures ultimately harmed America’s global financial dominance and thus the fate of all Americans.

The 20th Century was the American century in no small part because of our economic dominance in the financial services industry, which has always been centered in New York.... All Americans have a vested interest in strengthening America’s financial services industry.... The flawed implementation of the 2002 Sarbanes-Oxley Act (SOX) ...[has] produced far heavier costs than expected ... The time has come not only to re-examine implementation of SOX, but also to undertake broader reforms, using a principles based approach to eliminate duplication and inefficiencies in our regulatory system. (City of New York 2007:ii)

These responses to allegations of financial wrongdoing represent appeals to what Clift and Wolf refer to as “economic patriotism”: “economic choices which seek to discriminate in favour of particular social groups, firms or understood by the decision-makers as insiders because of their territorial status” (2012:308). In the cases cited above, the implicit argument made by politicians is that concern over suspected instances of corporate malfeasance should be overridden by regional and national economic interests.

## TOO BIG TO JAIL

In bringing attention to these issues I do not mean to diminish the significance of Barak’s argument about “non-penal strategies” resulting from collusion between Wall Street and Washington. But I do want to suggest that the pressure towards non-prosecution of financial crimes can exist even in the absence of *overt* collusion. The increasingly widespread acceptance of the “too big to jail,” or perhaps more accurately, the “too economically important to jail,” viewpoint has created a situation in which executives at financial firms can engage in illegal, but highly profitable, behavior with little fear of criminal

sanctions. Concern that this may be exactly the situation in which we find ourselves prompted a January, 2013 letter from Senators Chuck Grassley and Sherrod Brown to Attorney General Eric Holder in which they asked:

1. Has the Justice Department designated certain institutions whose failure could jeopardize the stability of the financial markets and are thus, "too big to jail"? ....
2. Has the Justice Department ever failed to bring a prosecution against an institution due to concern that their failure could jeopardize financial markets? (Brown and Grassley 2013)

As of this writing, the Justice Department has not responded to these questions, but they go to the heart of the issue. As Brown and Grassley (2013) observed in their letter:

Our markets will only function efficiently if participants believe that all laws will be enforced consistently, and that violators will be punished to the fullest extent of the law. There should not be one set of rules that apply to Wall Street and another set for the rest of us.

## CONCLUSIONS

Those of us who do research in the area of white-collar crime frequently complain about the relatively low visibility of our work in academic and policy discussions. This situation has become all the more galling in recent years as the U.S. has been shaken by a series of corporate crime waves and a devastating financial crisis triggered, in part, by widespread white-collar criminality. Gregg Barak's *Theft of a Nation* will hopefully help to change this situation. The primary strength of Barak's work is that he places the issue of the comparative leniency shown to white-collar offenders within a larger theoretical framework that describes the relationship between law, capital, and financial crime. This framework forces us to step back and examine the broader forces that are shaping our economy and our society. In this essay I have attempted to follow Barak's lead to consider how the increasing predominance of the financial services industry in our economy has influenced our legal responses to financial crime. I would hope that others would also take a cue from Barak's analysis to think about how a changing institutional environment has facilitated white-collar crime.

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## Corporate Crime and the Corporate Agenda for Crime Control: Disappearing Awareness of Corporate Crime and Increasing Abuses of Power

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While Michelle Alexander's book *The New Jim Crow* (2012) has captured public attention and a place on the best-seller list, criminology and public policy would be well served by similar attention paid to Gregg Barak's *Theft of a Nation* (2012). Having a white guy redirect attention from race is not unproblematic, even though it supports Alexander's conclusion that the path forward lies in disregarding the civil rights movements in favor of Martin Luther King's vision of a human rights approach. Alexander writes of the poor and working class needing to come together in a multiracial alliance, not to do better within the existing political and economic structure, but (in King's words) to "create an era of revolution... We are called upon to raise certain basic questions about the whole society" (in Alexander 2012:259). That's what Barak's book does as well.

*Theft of a Nation* raises basic questions that need to be addressed about power, money, corporate crime and the performance of a democratic government. While capturing considerable nuance, it exposes how the major financial institutions are ongoing criminal enterprises; the government acts as a corrupted protection racket that betrays a public interest shared by, if not the poorest 99%, then certainly the poorest 90%. The implication is not just that the *Rich Get Richer and the Poor Get Prison* (Reiman and Leighton 2013), but also that the governments in the U.S. and other developed nations are "weak, quasi-states" that have been "reduced to the (useful) role of legal police precincts, securing a modicum of order required for the conduct of business, but need not be feared as effective brakes on the global companies' freedom." Meanwhile, the "janitors of the suitably weakened states" need to prove their worth, so fighting street crime "becomes indispensable in creating legitimacy" (Christie 2004:37; Leighton and Reiman 2014).

This paper explores some implications of *Theft of a Nation* that deal with economic inequality and the criminological imagination. Although these issues are important, they are a narrow slice of the rich and profound concerns raised by Barak's book because it does such an admirable job with its core topic. He has done a great deal of onerous work digesting a non-criminological literature that is vast, complex, and ideologically charged, and presenting it in a coherent criminological framework that skewers the rhetoric hiding the injustices of this crisis. (Given that some of Barak's earlier works have been vast and/or complicated, I should note that this book on financial fraud is modest-sized and quite readable without being superficial.)

Barak rejects President Obama's facile statements that actions leading up to, and following the financial crisis, were immoral but not illegal. He exposes the industry lobbying, donations and influence that lead not just to the hobbling of regulators, but "regulatory colluding": regulators failed to restrict no-documentation ("liar's") loans, Congress allowed banks to speculate with customers' deposits, regulators agreed that banks could borrow 30 to 40 times their assets to invest, all authorities worked to keep complex and risky derivatives from being regulated and allowed banks to use their own pricing models to demonstrate they had adequate risk controls.

Barak illustrates the declining interest in major criminal fraud cases, for example not borrowing the strategy of the Enron Task Forces, which garnered hundreds of convictions and several multi-decade sentences. The Department of Justice also disbanded Bush's Corporate Fraud Task Force for a more narrowly focused Financial Fraud Enforcement Task Force that quickly lost focus on corporations and investigated individuals who victimized financial institutions as well as

individual investors. The Attorney General reports thousands of such indictments for mortgage fraud as evidence that the administration has done something and is on the case, but Barak highlights the complete lack of criminal prosecutions for major financial institutions or their executives. Governmental crime statistics are distorted and misleading because during the collapse of Enron and other companies in 2001 – when accounting fraud cost investors 70 to 90 percent of their money and top officials of those companies “were getting immensely, extraordinarily, obscenely wealthy” (Reiman and Leighton 2013:146) – the Department of Justice reported that “property crimes had continued their downward trend and fallen to an all-time low” (Barak 2012:73). The Dodd-Frank reform bill provides “loopholes... to reproduce the recent history of banking” (2012:153).

*Theft of a Nation* is thus a necessary reality check to agnotology, which is the study of ignorance (rather than epistemology, the study of knowledge and belief), and particularly culturally constructed ignorance from special interests creating confusion and thus obscuring the truth. Ignorance is a strategic ploy: “we rule you, if we can fool you” (Proctor and Schiebinger 2008: 11). Financial institutions portray themselves as the victims of the crash rather than the cause, and this “big lie” is repeated by many who had a hand in the deregulation that ultimately was a cause of the crisis (Ritholtz 2011a and b). They try to blame government “over”-regulation and even the Community Reinvestment Act of 1977, which tried to increase minority homeownership rates but did not apply to the financial institutions generating the largest volume of subprime loans (Ritholtz 2008).

Moreover, Barak’s book is a necessary antidote for a time when too much research on white collar crime is decontextualized: it discusses non-street crimes without attention to the power dynamics between the perpetrator and victim. Perhaps Black’s (1976) *Behavior of Law* is now too dated to be studied, so scholars have forgotten that there is less law in an “upward direction” (such as when the relatively weaker/poorer are victimized by the stronger/richer) than vice versa. Perhaps the violations of equality under the law no longer need documenting. Perhaps criminology is reflecting – and recreating – a world where officially defined corporate crime is disappearing even as corporate abuses of power are becoming more brazen, depraved and harmful.

The unmasking of oppression is a hallmark of Barak’s scholarship; it combines with brilliance and creativity to make him a standard citation in many areas of criminology. But it would be a shame if *Theft of a Nation* became a standard citation simply because of a dearth of criminological research – especially book-length investigations – of this latest episode of financial disorder and looting. Instead, this volume should find a place in the criminological literature because it more generally inspires criminologists to refocus some attention onto the acts of

the powerful, their enablers in government, and forms of widespread public victimization.

To reverse this process, the remainder of this paper explores some of the factors that corrupt the criminological imagination about crimes of the powerful and especially corporate power. In many ways, the concern is ideology, which is “when ideas, however unintentionally, distort reality in a way that justifies the prevailing distribution of power and wealth, hides society’s injustices, and thus secures uncritical allegiance to the existing social order” (Reiman and Leighton 2013:183). The problems that come to widespread attention are those which do not challenge the fundamental fairness of the social order and only require tinkering with the system. These ideas, sincerely held by elites and those who own the mass media, are most frequently repeated and become “commonsense” understandings. Real problems – including the “basic questions about the whole society” that King raised – become invisible; our ability to imagine a more just social order and the criminological imagination become corrupted.

My hope is that *Theft of a Nation* will inspire others to study the wrongdoing of the powerful and adopt a theoretically critical perspective toward it, so the remainder of this paper provides a brief overview of some key points along which an ideology of the “crime problem” is created. The first section, “Size matters,” helps stimulate thinking about the sheer size of corporations and why it is important. Subsequent sections briefly review the impact this has on law making and enforcement. Equally problematic is the lack of white collar and corporate crime in national “crime” reports. This is especially a problem when governments partner with financial institutions to address fraud, and where industry funds research reports on its own victimization without similar resources going to study victimization of the public by industry and commerce. A final section provides a reminder about the corporate ownership of media.

## SIZE MATTERS

Mooney notes that while “class remains a primary determinant of social life,” most public “discourses about modern society have been largely de-classed” (2008:68). The neglect of class occurs in a context where “the scale of this inequality is almost beyond comprehension, perhaps not surprisingly as much of it remains hidden from view” (2008:64). This statement applies as well to understanding corporate power, which is an important but especially neglected aspect of economic inequality, itself receiving less attention than race, class or sexual orientation.

Braithwaite nicely summarizes the problem of inequality by explaining that inequality “worsens both crimes of poverty motivated by *need* for goods for use and crimes of wealth motivated by *greed* enabled by goods for exchange” (1992:81, emphasis original). For Braithwaite,

“need” can be either absolute or based on “advertising and dramatization of bourgeois lifestyles” (1992:83). In general, then, “the more unequal the class structure, the more scarce national wealth is devoted to gratifying greed among people whose needs are satisfied, the less is devoted to satisfying unmet needs” (1992:83). As suggested by opportunity theory, where legitimate means to achieving such needs are blocked, illegitimate and criminal means for satisfying needs become more likely.

Even when the rich have their needs met, additional dollars still have value to them and they pursue additional wealth “to signify their worth by conspicuous consumption, to prove success to themselves, to build an empire, to leave an inheritance” (Braithwaite 1992:84). If legitimate means are blocked, the rich can pursue existing illegitimate means – *or create new types of illegitimate means*. The limitation of traditional opportunity theory is that it is not applied to the wealthy, and, notes Braithwaite, “if they are powerful enough, [wealthy] criminals can actively constitute illegitimate opportunities” (1992:86). Further, these novel illegitimate strategies “excel because they cannot be contemplated by those who are not wealthy” (1992:88), and at times they cannot be contemplated even by regulatory agencies. Inequality makes the wealthy more prone to criminality by allowing them to be unaccountable for the harms they do: “power corrupts and unaccountable power corrupts with impunity” (1992:89). The limit to this process is where corporate harm threatens the legitimacy of the state.

The intense concentration of wealth in corporations generates considerable political power, makes accountability increasingly difficult, and increases inequality in a way that is largely invisible to criminological theory. One way to problematize the size of corporate personhood is to compare the revenue of a corporation against the gross domestic product (GDP) of a country. (GDP is a measure of the value of all goods and services produced by a country). This process results in a list of the largest economies in the world and an abbreviated version is presented in Table 1. (A list of the top 100 economies is provided in Appendix A).

This list is not challenging to put together but is not regularly done. Simply by focusing for a moment on the financial institutions, the list calls into serious question the consolidation of “too-big-to-fail” banks with other larger financial institutions that were failing. This was one of a number of strategies used to resolve the financial crisis, and one that paved the way for fewer financial firms that are even larger. An important policy question not addressed is at what point a firm becomes too big to be regulated and subjected to the rule of law of a country, even a developed country or groups of developed countries? When companies become too big to prosecute criminally, wrongdoing is settled by fines that are a cost of doing business. At that point, there is an obligation to break the law by CEOs trying to maximize shareholder

value if the fine is less than the profit from wrongful conduct. But breaking up the big banks was not seriously considered and anti-trust law has done little to stop megamergers that vault more corporations further up this list, creating greater inequality with non-corporate persons and the regulatory resources of countries.

## LAW MAKING

The impact of money on politics is both well-known but missing from many criminology books that assume the criminal law reflects consensus. Criminal laws against murder, rape and assault do reflect consensus, but laws against corporate wrongdoing are a battleground where industries and commercial enterprises can assert themselves at the expense of the broader public interest. One observer suggested that “the bicameral whorehouse on Capitol Hill works like a vending machine. You put coins in the slot, select your law, and the desired legislation slides out” (Ritholtz 2012). White collar crime researchers routinely note that this allows the wealthy the biggest advantage – not having harmful acts they do appear as criminal laws. Harmful corporate acts are far more frequently prohibited by regulations rather than criminal law, are misdemeanors rather than felonies, and seemingly large fines can be measured in the hours it takes a corporation to generate an equivalent amount of revenue (Reiman and Leighton 2013). The point is not to create a system for corporations that mimics the over-criminalization and zero-tolerance approaches currently applied to individuals. Rather the goal is an enforcement pyramid for corporations and business entities that starts with effective regulation and extends to meaningful and proportionate criminal penalties for egregious and/or repeated violations.

To further stimulate the criminological imagination, consider some of the corporate crime codes in other nations that the U.S. is unlikely to ever consider. For example, Australia’s Criminal Code Act of 1995 modernized the country’s criminal code to clarify how it applied to increasingly complex organizations. The Australian Capital Territory went further and passed an industrial manslaughter act in 2003 to facilitate the prosecution of corporate bodies and managers responsible for employee deaths: “The Act inserts the offence of ‘industrial manslaughter—senior officer offence’ into the Crimes Act 1900. This offence provides that senior officers can be prosecuted where it is proven that their negligence or recklessness led to the death or serious injury of an employee under their supervision” (Haines and John 2004:7; Wheelwright 2004). Canada’s Bill C-45 of 2004 also focused on clarifying criminal law about worker safety and sought to “establish a legal duty for all persons directing work to take reasonable steps to ensure the safety of workers and the public” (Haines and John 2004:13).

**Table 1. World's Largest Economies: GDP and Fortune 500 Revenue, 2010**

Overall rank	Country rank	Company rank	Country/Company	GDP/Revenue (in billions of US \$)
1	1		United States	\$15,064.80
2	2		China	\$6,988.50
7	7		United Kingdom	\$2,481.00
11	11		Canada	\$1,758.70
29	29		South Africa	\$422.00
30		1	Wal-Mart Stores	\$421.80
31	30		United Arab Emirates	\$358.10
32		2	Exxon Mobil	\$354.60
51		3	Chevron	\$196.30
52	49		Romania	\$185.30
53		4	ConocoPhillips	\$184.90
57	53		Kuwait	\$171.10
62		6	General Electric	\$151.60
63	57		Hungary	\$147.90
65		8	General Motors	\$135.60
66		9	Bank of America Corp.	\$134.20
67		10	Ford Motor	\$128.90
70	58		Vietnam	\$121.60
71		13	J.P. Morgan Chase & Co.	\$115.50
72	59		Bangladesh	\$115.00
73		14	Citigroup	\$111.10
75	60		Iraq	\$108.60
77		17	AIG	\$104.40
78	61		Morocco	\$101.80
79		18	IBM	\$99.80
82		20	Freddie Mac	\$98.40
83	63		Slovak Republic	\$97.20
86		23	Wells Fargo	\$93.20
131	79		Guatemala	\$46.70
133		53	Merck	\$46.00
134		54	Goldman Sachs Group	\$46.00
136	81		Uzbekistan	\$43.70
146	84		Costa Rica	\$40.00
147		63	Morgan Stanley	\$39.30
148	85		Ghana	\$38.60

*Source:* Fortune 500 from [http://money.cnn.com/magazines/fortune/fortune500/2011/full\\_list/](http://money.cnn.com/magazines/fortune/fortune500/2011/full_list/) . International Monetary Fund, World Economic Outlook Database, September 2011. Gross domestic product is expressed in current (2011) U.S. dollars. <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx>.

Further, the United Kingdom enacted the Corporate Manslaughter and Corporate Homicide Act of 2007, under which an organization is guilty “if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased” (Ministry of Justice 2008:2). This “new offence allows an organisation’s liability to be assessed on a wider basis, providing a more effective means of accountability for very serious management failings across the organization” (Ministry of Justice 2008).

Where are the Corporate Assault laws, and/or Corporate Reckless Endangerment laws in the United States?

## REGULATION AND ENFORCEMENT

This area is also well covered by the existing literature on white collar and corporate crime. Much of the problem is that regulatory agencies see problems the way the industry does because of regulatory capture: people in regulatory industries come from industry and commerce, and they regulate with a light touch in anticipation of lucrative jobs with the private sector after public service. Less visible in discussions is the ability of corporations to lobby during the appropriation process to weaken the agencies that regulate them. Fewer resources for the regulator mean fewer studies, fewer rules, fewer inspectors, and less money for enforcement. Congressman Barney Frank, co-author of the Dodd-Frank financial reform legislation, says the bill is “facing a death through a thousand cuts” because of such tactics (Rivlin 2011).

Routine activities theory, typically applied to street offenses and resulting in “target hardening,” suggests that crime is more likely in the absence of a suitable guardian. Neither criminologists nor policy makers apply this straightforward criminological understanding to the regulation and policing of corporate conduct (Alvesalo, Tombs, Virta, and Whyte 2006). Financial institutions, among others, have shown themselves to be motivated offenders and the economic inequality makes the public vulnerable potential victims or “suitable targets.” Ritholtz, the CEO of a financial research firm and author of *Bailout Nation*, suggests that we wouldn’t allow the Super Bowl to be played without referees because “we know that players would give in to their worst impulses” – and the financial system is the same (Reiman and Leighton 2013:148). But he argues that the Securities and Exchange Commission is “defective by design” (Reiman and Leighton 2013:149). The SEC is funded not by taxes from citizens, but fees from the financial industry. Rather than allowing the SEC to set its own budget, Congress controls the SEC’s budget, which allows industry to lobby Congress to ensure that the police covering the Wall Street beat are understaffed, underpaid, under-resourced and have inadequate

technology. Politically-appointed Commissioners – who come from Wall Street and return to it – can also kill investigations or frustrate them by erecting many procedural hoops for staff to jump through.

Meanwhile, ideology triumphs because the popular belief is that regulatory agencies do too much and need to leave business alone. Instead, the problem is that under-resourced regulatory agencies pander to big business while and enforce rules against smaller businesses and individuals.

## CRIME REPORTS

National “crime” reports focus on street crime and anchor the socially created reality that the limited range of harmful acts defined as crime deserve our exclusive attention. Excluding corporate perpetrators who victimize the public from the government discourse about crime, shapes: (1) media reporting of the “crime problem;” (2) the information in criminology books; and (3) research that uses available data (which can then get reported in the media and criminology books). In this sense, the problem is not just the lack of a regular national report on white collar crime, but the failure to integrate white collar and corporate crimes into annual reports that are supposed to represent a picture of criminal victimization in the nation. To be genuinely useful to the public, policy makers and the criminal justice system, it should tabulate *all* crimes, not just street crimes (Leighton and Reiman 2014).

This point is not new but it does bear repeating: the U.S. does not have a report to the nation about white collar crime – which by *any* estimate is larger than street crime property losses – nor are categories of corporate crime included in annual crime reports. The National Crime Victimization Survey does not have any questions about white collar crime even though the National White Collar Crime Center completed large scale surveys in 1999 and 2005 – and found that half of the households were aware of experiencing a white collar victimization (Friedrichs 2010:47). The Federal Bureau of Investigation data about property crime includes the offenses of burglary, larceny-theft, motor vehicle theft, and arson. Larceny-theft includes purse-snatching but not embezzlement; shoplifting but not con games; and stealing from buildings and cars but not fraud (Federal Bureau of Investigation 2012: Table 7). While many arrests for small-scale scams and cons are not central to the study of white collar crime, the exclusion of these categories from the main body of a report on crime further removes white collar crimes from public consciousness.

While the British system also leaves much to be desired, at least its report on crimes known to the police includes under the “theft” category: “fraud by a company director,” false accounting and fraud by abuse of position

(Home Office 2012:19). Further, homicide does include acts charged under the Corporate Manslaughter and Corporate Homicide Act 2007 (2012:16).

## **CRIME REPORTS WHEN GOVERNMENT PARTNERS WITH INDUSTRY AND COMMERCE: THE BRITISH CASE**

In the British victimization survey (CSEW), fraud data are supplemented by “non-National Statistics” from the National Fraud Intelligence Bureau (NFIB). This bureau is part of the City of London’s metropolitan police, which partners with industry to collect and process information about fraud (City of London Police 2013). The victimization survey conceptualizes fraud as: scams involving charities, corporate employees, computer misuse, investment, insurance-related, advance fee, corporate procurement, telecommunications industry, banking/payment, and business trading (Office for National Statistics 2012a:58). However, business trading is only about (“illegitimate”) businesses set up to commit scams, not the scams of “legitimate” businesses. Telecommunications industry fraud refers to mobile phone fraud by individuals directed at telecom companies, not behavior of the telecom companies or telemarketing firms. The banking and payment fraud largely involves check/cheque fraud and (credit and debit) “plastic card” fraud, which means unauthorized purchases that victimize financial institutions rather than institutional wrongdoing. The corporate employee fraud refers to “an employee making a fraudulent claim for travel or subsistence” (Office for National Statistics 2012b:35) rather than the behavior of executives perpetrating frauds on their employees, shareholders, customers, or government.

A publication by the British National Fraud Authority (NFA) – an executive agency within the Home Office that also partners with industry – has estimates of fraud *against* insurance companies and mortgage lenders (National Fraud Authority 2012:17), but not corresponding estimates of fraud done *by* these industries against the public to boost profits. The NFA’s discussion of fraud against individuals included “mass marketing fraud,” which means unsolicited communications for money (National Fraud Authority 2012:8-9) rather than false advertising or deceptive trade practices. “Insider-enabled fraud” is “staff fraud” and “employee fraud” (2012:24). But notably absent from the reports of both fraud agencies is control fraud, which is perpetrated by executive-level insiders. Executives who control a company create fictitious profits to turn corporate assets into personal assets (through stock awards, bonuses, etc.) and ultimately defraud a variety of people, like shareholders. Businesses “report sensational profits, followed by catastrophic failure” (Barak 2012:73) – a pattern that should be immediately recognizable to the British and citizens of every developed nation.

In each of these cases, police are working with powerful institutions (e.g., the UK Cards Association) to prevent losses perpetrated by individuals, with no effort even to recognize that individuals are victimized by institutions. Agencies have a mission that includes sharing data between public and private sectors, but the data from the private sector is about their own victimization at the hands of individuals, so the resulting crime reports are lopsided in their coverage of harms. While there is nothing inherently wrong about the government working with industry, when government’s partnerships with industry are stronger than with consumer groups, reports and data will reinforce the view of crime as interpersonal and individual against business; corporate victimization of the public, however prevalent in the real world, will make token appearances at best.

Unfortunately, the situation in the U.K. will get worse before it gets better: the British are starting a survey about the victimization of business establishments that will be incorporated into future releases of the regular CSEW survey reports (Office for National Statistics 2012a:79), but there seems to be no consideration of expanding the survey to include more victimizations of consumers, employees and communities by business establishments. In the U.S., criminal definitions and data collection practices make it likely that our crime reports will increasingly come to share this bias.

## **CORPORATE RESEARCH ON THEIR OWN VICTIMIZATION**

*The Rich Get Richer and the Poor Get Prison* is one of the only efforts to regularly tabulate the costs of white collar crime (Reiman and Leighton 2013:132). The lack of a precise definition of white collar crime no doubt hinders this task. There are very few independent efforts to collect information on pieces of the puzzle. I was involved with research on earlier editions of the *Rich Get Richer* long before I became a co-author, and one very noticeable trend within white collar research has been the increase in industry-funded studies about their own victimization without a symmetrical effort to look at the losses those industries inflict on the public.

Perhaps the clearest example is the insurance industry, which has real losses from customers who file false or inflated claims about their cars, health care and property. But there is no accounting of the losses to customers who have claims wrongly denied, even within the context of an insurance policy carefully written to falsely appear to be more comprehensive than it really is. These losses are also real to the people who suffer them and are an inherent problem in the business model of insurance, where the industry directly profits when they do not pay on a valid claim. In an article entitled “Home Insurers’ Secret Tactics Cheat Fire Victims, Hike Profits,” Bloomberg News noted that “paying out less to victims of catastrophes has helped

produce record profits.” Although they do not put a total dollar amount on such losses, “insurance companies routinely refuse to pay market prices for homes and replacement contents, they use computer programs to cut payouts, they change policy coverage with no clear explanation, they ignore or alter engineering reports, and they sometimes ask their adjusters to lie to customers, court records and interviews with former employees and state regulators show” (Dietz and Preston 2007).

This pattern replicates itself across industries, but these industry-funded studies get picked up by the media, used in political speeches, cited in policy briefs, are referenced in journal articles and used in other ways that reinforce a corporate agenda of crime control. The effects are less powerful than when government is a direct partner, but they collectively reinforce the crime problem as being about individuals and not corporations. The existence of numerous reports about the victimization of industry needs to be a warning to my earlier recommendation that national crime reports need to include white collar crimes. A national report on crime that included interpersonal crime and the white collar crimes of individuals against businesses could conceivably be worse than the current national crime reports because corporate perpetrators would be omitted from what would appear to be a comprehensive report on crime.

## CORPORATE OWNERSHIP OF THE MEDIA

It is widely known in journalism that “if it bleeds it leads” and media favor sensational stories about street crime over white collar crimes. This reinforces the idea that “crime” means “street crime.” The local news is especially likely to cover street crime rather than white collar crime, while the national media covers sensational white collar crime cases like Madoff’s Ponzi scheme rather than more ordinary business practices that harm workers, consumers and the environment.

But the corporate ownership of media adds a new and important dimension by adding vested corporate interests to the process of selecting stories about wrongdoing, framing, inviting experts for comments, etc. Consider the case of GE, which until 2011 held a majority stake in NBC Universal, which owns NBC television (and A & E, USA, and others), MSNBC and the financial news outlet CNBC. GE is a prolific corporate criminal across several decades (Barak, Leighton and Flavin 2010:191-194), partly because they have a diverse manufacturing base that includes appliances, parts for power plants, jet engines, nuclear power plants, wind farms and medical equipment. Its lending division provides more than half of their profit, so “many Wall Street analysts view G.E. not as a manufacturer but as an unregulated lender that also makes dishwashers and M.R.I. machines” (Kocieniewski 2011).

GE reported \$5 billion in profits from US operations in 2010, but paid no corporate income tax – and “in the last

five years, G.E. has accumulated \$26 billion in American profits, and received a net tax benefit from the I.R.S. of \$4.1 billion” (Kocieniewski 2011). The story ran on ABC’s network TV news and Fox, but not NBC nightly news or the NBC public affairs program *Meet the Press* (several commentators on MSNBC and CNBC, which have substantially smaller audiences, talked about it). A *Washington Post* article on the “missing story” noted that the director of Fairness and Accuracy in Reporting “cited a series of GE-related stories that NBC’s news division has underplayed over the years, from safety issues in GE-designed nuclear power plants to the dumping of hazardous chemicals into New York’s Hudson River by GE-owned plants” (Farhi 2011).

Financial news outlet CNBC is essentially an economic infomercial because of the rather obvious but little discussed conflict of interest between owning a financial news network and being one of the world’s largest financial operations. GE created a number of finance arms to help people and companies buy its products. So most people know GE “for light bulbs and home appliances, but GE Capital is one of the world’s largest and most diverse financial operations, lending money for commercial real estate, aircraft leasing and credit cards for stores such as Wal-Mart. If GE Capital were classified as a banking company, it would be the nation’s seventh largest” (Gerth and Dennis 2009). Although GE was not originally eligible for government support through programs enacted to help with the financial crisis, they engaged in lobbying and received \$74 billion in loan guarantees that helped the company finance its operations at low cost (Gerth and Dennis 2009). GE is one of the entities sued by the Federal Housing Finance Agency over “securities law violations or common law fraud” in the sale of mortgage-backed securities to Fannie Mae and Freddie Mac (FHFA 2011).

CNBC video should have had a disclaimer “crawl” across the bottom of the screen and every page of its website: “CNBC is substantially owned by GE, which has derived a majority of its revenue from bank-like financing operations. GE received federal bailout money and been charged with fraud in the sale of mortgage-backed securities.” That might not stimulate the criminological imagination, but it would make viewers appropriately skeptical of the outlet’s objectivity.

GE’s influence over NBC Universal also means it also oversaw the USA network, which has been airing a series called *White Collar*. In it, Neal is a convicted art forger who joins forces with an FBI agent to solve white collar crimes. But the crimes portrayed on *White Collar* are a narrow apolitical set of white collar crimes—and they are ones that do not challenge abuses of power by corporations or government (Leighton 2010). Art theft or the other variations on the show tend to be interpersonal crimes: one-on-one crimes, either without a clear power dynamic or one in which an individual is protected by the FBI from

a more powerful group of obvious "bad guys" like organized crime trafficking in expensive artifacts or career criminals. Absent are episodes where someone or some entity with power and prestige who is seen as a respectable person or corporation victimizes the less powerful, which is the essence of white collar crime and the common theme of most definitions. The show had an episode about mortgage fraud that involved an individual judge – *perhaps* in collaboration with someone high in the FBI – improperly signing papers in a series of less than ten real estate frauds. Among the real corporate frauds it did not expose were predatory lending; fraud and abuse of power by financial institutions; misrepresentations in securitized mortgage products; high executive pay and bonuses for those who drove the economy to crisis; insider trading by executives who sold shares before the crash; or an assault on private property rights by institutions that commit perjury by hiring “robosigners” to file foreclosure affidavits that swear to facts they do not know.

## CONCLUSION

Economic inequality is one of the defining issues of our time, one that has a profound influence on the shape of justice but is generally neglected by criminology. The neglect of class and especially corporate power impoverishes criminology by limiting the scope of its inquiry, its analytical tools and explanatory power. But economic inequality, especially as it includes corporate persons, is an inconvenient truth (Leighton and Reiman 2014). Many have vested interests in the current system and many others are more focused on getting ahead (legally or otherwise) within the existing system rather than asking the basic questions about alternative social orders.

Curiously, Alexander understands the need for a revolutionary era along the lines of class even though the *New Jim Crow* focuses tightly on the issue of African Americans – at least until the last three pages, where she tells the traditional civil rights movement, “without a hint of disrespect: adapt or die” (2012:260). In Alexander’s indictment, there is black race but no class, as if the prisons contained scores of middle class blacks and the scattering of black bankers at major financial institutions. The *New Jim Crow* is fueled by racism, but the operations of capitalism are nowhere to be seen: no “bodies destined for profitable punishment” (Leighton and Selman 2012), no criminal justice-industrial complex, no private prisons, no links with a political economy of punishment (and a massive deindustrialization in the U.S. that had something to do with the incarceration binge) (Selman and Leighton 2010). Alexander writes movingly of black former felons denied the right to vote and thus situated similarly to their ancestors who were disenfranchised. But part of the current injustice is that *Citizens United v FEC* (08-205, 2010) expanded the notion of corporate personhood to give

corporations the right to spend unlimited amounts in political campaigns – and that this right is rooted in the 14<sup>th</sup> Amendment that was supposed to empower newly freed slaves.

The exclusion of corporate power and agency from Alexander’s book is noteworthy because of the conclusion she arrives at with respect to social change, but the invisibility of economic inequality is widespread. As I have become more involved in understanding this issues, I have become increasingly fond of Reiman’s admonition that philosophical reflection on the concept of crime is necessary for criminology to establish its “intellectual independence of the state, which to my mind is equivalent to declaring its status as a social science rather than an agency of social control, as critical rather than servile, as illumination rather than propaganda” (Reiman and Leighton 2013:243).

This quote does not mean that all criminology working to protect the powerful against victimization is propaganda. But it is a warning that the discipline, especially because its defining concept is a government product, can be easily captured by the state pursuing a corporate agenda. Reproducing FBI property crime rates from the 1990s to the present without noting the Savings and Loan looting, Enron era scams and the latest episode of barely contained looting is tantamount to propaganda.

Vigilance against ideology is necessary. Use the “critical thinking” directives from the university for this end. Think more about the power relationships between perpetrators and victims. Take some steps to focus more on perpetrators who have power. Apply Routine Activities to corporate crime control. Apply Rational Choice theory to the rich. Apply strain theory to the rich. Make corporate persons and corporate entities part of the study of criminology and problematize the lack of capable guardians to control motivated corporate offenders. Finally, read *Theft of a Nation* to learn more about financial crime, the piercing of ideology to bear witness to injustice and public victimization, and embrace a model of speaking truth to power.

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<b>APPENDIX A: The 100 Largest Economies: GDP v Corporate Revenue, 2010</b>				
Overall rank	Country rank	Company rank	Country/Company	GDP/Revenue (in billions of US \$)
1	1		United States	\$15,064.80
2	2		China	\$6,988.50
3	3		Japan	\$5,855.40
4	4		Germany	\$3,628.60
5	5		France	\$2,808.30
6	6		Brazil	\$2,517.90
7	7		United Kingdom	\$2,481.00
8	8		Italy	\$2,245.70
9	9		Russia	\$1,884.90
10	10		India	\$1,843.40
11	11		Canada	\$1,758.70
12	12		Spain	\$1,536.50
13	13		Australia	\$1,507.40
14	14		Mexico	\$1,185.20
15	15		Korea	\$1,163.80
16	16		Netherlands	\$858.30
17	17		Indonesia	\$834.30
18	18		Turkey	\$763.10
19	19		Switzerland	\$665.90
20	20		Sweden	\$571.60
21	21		Saudi Arabia	\$560.30
22	22		Poland	\$531.80
23	23		Belgium	\$529.00
24	24		Taiwan Province of China	\$504.60
25	25		Norway	\$479.30
26	26		Islamic Republic of Iran	\$475.10
27	27		Argentina	\$435.20
28	28		Austria	\$425.10
29	29		South Africa	\$422.00
30		1	Wal-Mart Stores	\$421.80
31	30		United Arab Emirates	\$358.10
32		2	Exxon Mobil	\$354.60
33	31		Denmark	\$349.10
34	32		Thailand	\$339.40
35	33		Colombia	\$321.50
36	34		Greece	\$312.00

37	35		Venezuela	\$309.80
38	36		Finland	\$270.60
39	37		Singapore	\$266.50
40	38		Malaysia	\$247.60
41	39		Nigeria	\$247.10
42	40		Hong Kong SAR	\$246.90
43	41		Israel	\$245.30
44	42		Chile	\$243.00
45	43		Portugal	\$241.90
46	44		Egypt	\$231.90
47	45		Ireland	\$222.30
48	46		Czech Republic	\$220.30
49	47		Philippines	\$216.10
50	48		Pakistan	\$204.10
51		3	Chevron	\$196.30
52	49		Romania	\$185.30
53		4	ConocoPhillips	\$184.90
54	50		Algeria	\$183.40
55	51		Kazakhstan	\$180.10
56	52		Qatar	\$173.20
57	53		Kuwait	\$171.10
58	54		New Zealand	\$168.80
59	55		Peru	\$168.50
60	56		Ukraine	\$162.90
61		5	Fannie Mae	\$153.80
62		6	General Electric	\$151.60
63	57		Hungary	\$147.90
64		7	Berkshire Hathaway	\$136.10
65		8	General Motors	\$135.60
66		9	Bank of America Corp.	\$134.20
67		10	Ford Motor	\$128.90
68		11	Hewlett-Packard	\$126.00
69		12	AT&T	\$124.60
70	58		Vietnam	\$121.60
71		13	J.P. Morgan Chase & Co.	\$115.50
72	59		Bangladesh	\$115.00
73		14	Citigroup	\$111.10
74		15	McKesson	\$108.70
75	60		Iraq	\$108.60
76		16	Verizon Communications	\$106.50
77		17	American International Group	\$104.40

78	61		Morocco	\$101.80
79		18	International Business Machines	\$99.80
80	62		Angola	\$99.30
81		19	Cardinal Health	\$98.60
82		20	Freddie Mac	\$98.40
83	63		Slovak Republic	\$97.20
84		21	CVS Caremark	\$96.40
85		22	UnitedHealth Group	\$94.20
86		23	Wells Fargo	\$93.20
87		24	Valero Energy	\$86.00
88		25	Kroger	\$82.20
89		26	Procter & Gamble	\$79.70
90		27	AmerisourceBergen	\$78.00
91		28	Costco Wholesale	\$77.90
92	64		Azerbaijan	\$68.50
93		29	Marathon Oil	\$68.40
94		30	Home Depot	\$68.00
95		31	Pfizer	\$67.80
96		32	Walgreen	\$67.40
97		33	Target	\$67.40
98	65		Oman	\$66.80
99		34	Medco Health Solutions	\$66.00
100	66		Ecuador	\$65.30

*Source:* Fortune 500 from [http://money.cnn.com/magazines/fortune/fortune500/2011/full\\_list/](http://money.cnn.com/magazines/fortune/fortune500/2011/full_list/) . International Monetary Fund, World Economic Outlook Database, September 2011. Gross domestic product is expressed in current (2011) U.S. dollars. <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx>.

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## The Extraordinary Relevance of Barak's *Theft of a Nation*

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Richly detailed and analytic, Gregg Barak's (2012) *Theft of a Nation*, draws us into the world of the financial crises that plague America, and affect the world through the global economy. In recent decades, the recurrence of prominent financial crimes has served as signs of the larger economic crisis that loom around the world. Examples of these egregious crimes include: Bernie Madoff's two-decade long Ponzi scheme; illegal investments made by Stanford International Bank with depositors' resources; revenue manipulations by Bernie Ebbers at WorldCom; financial crimes of individuals like Yasuo Hamanaka, Nick Leeson, and Kweku Adoboli, labeled as "rogue traders" to cover up any notion that these kind of illegal trading activities are routine; and the well-organized financial crimes of Ken Lay, late CEO of Enron and accounting firm, Arthur Anderson. These examples are the tip of the iceberg of financial crime and fraud. In 2002, the Association of Certified Fraud Examiners estimated that white collar fraud accounted for \$600 billion in losses in the US, and costs 354 times as much economic losses as all street crimes combined. It is in the context of these serious, widespread yet neglected financial crimes that Barak's work takes its significance.

In my opinion Barak's book ought to be considered an instant classic in the field of white-collar and corporate crime research, and is so compelling that there is little need to do more than commend Barak on his work. As an academic I could conjure up some criticisms, but such an approach would distract from the work's importance and avert attention from the larger problems Barak addresses. Instead, I examine some of the important implications of Barak's work to highlight its significance. To do so, I examine the power elite's role in producing crimes of the powerful. In addition, I critique traditional criminological arguments concerning assumptions about the individual, psychological causes of white collar crime. In contrast to that view, Barak's approach makes it clear that there is a

need to address the composition and organization of the financial industry, the organization of regulation, and capitalism itself as causes of these offenses. To make that link clear, I also explore a more radical-Marxist analysis of capitalism and the central role exploitation plays in capitalism, and how the expansion of exploitation itself produces these crimes. Finally, I use Barak's "theft of a nation" concept to discuss some other relevant corporate crimes that promote green or environmental crimes that lead to the "theft of public health."

### THE POWER ELITE

Barak's work owes a clear debt to the literature on the power elite, who, as C. Wright Mills noted are those,

whose position enable them to transcend the . . . environments of ordinary men and women; they are in positions to make decisions having major consequences . . . .[T]hey are in command of the major hierarchies and organizations of modern society. They rule the big corporations...direct the machinery of the state and claim its prerogatives. They direct the military establishment. They occupy the strategic command posts of the social structure, in which are now centered the effective means of the power and the wealth and the celebrity which they enjoy. (1956:3-4)

In this way, the power elite play significant roles in making history and shape the path modern society travels (see also Mills 1959). The power elite, of course, do not have unrestrained control, and the kinds of power they exert and the ways they shape history are limited by the structural organization of society, which is in turn shaped by its economic organization. The elite's power comes from existing economic, social and political relations, and

hence they are not about to undo those relations by changing the prevailing power structures which advantage them.

The power elite concept captures how the elite use their power to shape modern life. The power elite exist in different forms and spheres of society, and occupy decision-making roles in federal and state governments, in the legal structures of those institutions, in the world of business and finance, and in the military. These are “the higher circles” of power in American society (Domhoff 1998, 1990, 1970). The major institutions staffed by the power elite are embedded in the organizational structure of the nation from coast to coast, border to border, and increasingly, in a global economic system, across the nations of the world (Greider 1998).

Thus, to speak of “the theft of a nation,” as Barak does, implies the need to understand that those driving the current financial crises must, out of necessity of their structural locations, work together, and aid each other in their objectives. Because the power elite draws its power from the same general set of institutional and structural arrangements it must, in order for each segment of the power elite to survive, facilitate and reinforce the power base from which each segment gains its access to power. These power elite segments are, therefore, likely to work together, or at least they will be unlikely to disturb each other significantly -- for how can they? This would undermine their own positions of power. To be sure, in some cases the power elite must control one another to maintain the system’s legitimacy (Habermas 1975; Wolfe 1977). But they cannot do this in ways that destroy the very basis of their power. They cannot unmask the great power structure itself, or point out its contradictions; they must legitimize and survive within the existing structure of power to maintain their access to power and, as Chambliss pointed out in his structural Marxist analysis, toward maintaining the long-term interests of the capitalist system as a whole. If the power elite constrain one another, it is because they are worried that one segment of the elite is gaining too much power and limiting the kinds of power the other segments can access and exercise. And because each segment of the power elite has access to power, there is a need to maintain a balance of power between themselves, and to exert power when necessary in extreme cases to control the balance of power among the elite. This sometimes means using power to control the most deviant individuals among the power elite. It does not entail using power to reorganize the power structure to eliminate the crimes of the powerful.

As Mills argues, as ordinary people we understand this situation, and that we have little ability to control the power elite who, as Barak notes, move across segments of the power structure (e.g., from banking to government and the regulatory regime, and back again). The ordinary people are led to believe they can have some input into how these processes of power are exercised by

participating in the political structure of a nation. Yet, at the same time, ordinary people come to understand that they have little effect on the power structure, and so they recoil, withdraw from participating, and in doing so, facilitate the further expansion of the power of the elite. But this part of the story is beyond the scope of the present argument. To better understand the importance of Barak’s work, it is also necessary to discuss efforts that oppose his work: efforts to individualize the crimes of the powerful and to make them appear as individual deficits rather than as structural and systemic problems.

## **THE MYTH OF PERSONALITY AS AN EXPLANATION FOR FINANCIAL FRAUD**

One factor that binds the power elite together and facilitates their cooperation and tendency to reinforce the status quo is their psychological properties and makeup, both as individuals and as a group or class (Mills 1956). On this issue, Barak preferences organizational theories of white collar crime over personality theories since it is the influence that organizational structures have over personalities that aid in the production of crimes of the powerful. One could, of course, argue that it is the intersection of organizational forces and personality that produces the crimes of the powerful. To do so, however, is to minimize the structuring influence of organizational forces, and to engage in traditional reductionist explanations of crime which may explain crime as an individual-level choice. Those explanations, however, hide the explanation of crime behind the idea that people make choices, and ignores why they make those choices, how those choices are channeled and how organizational structures play a role in that process. Moreover, choice-based arguments are scientifically questionable since they cannot be refuted empirically (i.e., the “theory” does not identify the criteria for measuring choice, or conditions for the rejection of choice based arguments). The idea of individual choice is part of the mythology of free market capitalism, yet even the most ardent of rational and situational choice criminologists accept the concept of “limited rational choice.” Indeed, the limits to rational choice can be so complex and interwoven that the “freedom” of choice is merely an illusion.

Relying on personality and individual differences, the traditional criminologist draws us into a decidedly one-sided view of the powerful offender’s crimes by implying that there is something deviant about the offender. That assumption detracts attention from the system of power, and how that system establishes the conditions that lead to and produce deviance. The more appropriate view, as Barak demonstrates, is to describe the constitution of power, and how the system of power is established and operates and interacts to produce the crimes of the powerful, and shapes the actors who carry these out.



This does not mean, however, that we should entirely neglect the personality structure of the power elite. Rather, it means understanding personality as a characteristic of the elite as a group or class. In other words, if there is a power elite personality characteristic, it is associated with the mass of the power elite, and not simply with individual members of the power elite—it is a description of the structural aspects of the psychology of the power elite.

This point was addressed by Mills who noted

. . . in so far as the elite flourishes as a social class . . . it will select and form types of personality, and reject others. The kinds of moral and psychological beings men will become is in large part determined by the values they experience and the institutional roles they are allowed and expected to play. . . . [A] man of the upper class is formed by his relations with others like himself in a series of small intimate groupings through which he passes and to which throughout his lifetime he may return. So conceived, the elite is a set of higher circles whose members are selected, trained and certified and permitted intimate access to those who command the impersonal institutional hierarchies of modern society. If there is any one key to the psychological idea of the elite, it is that they combine in their persons an awareness of impersonal decision-making with intimate sensibilities shared with one another. (Mills 1956:15)

In this sense, the personality of an individual member of the power elite is not unlike the rest of its members. That personality is sought out by the power elite, and trained into subsequent generations (Box 1983). To say that a member of the power elite has a given personality structure is simply to recognize in individual members of the power elite the manifestations of the general psychological characteristic of the power elite as a group. In taking this view, we come to recognize that the personality structure of any individual member of the power elite, which the orthodox criminologist points toward as the cause of his/her crime, is nothing but a manifestation of the general personality structure of the power elite as a whole. It is, therefore, not the personality structure of the individual member of the power elite that matters, but the structural composition of personality in relation to the organization of power. There is a paucity of data on this interpretation of the crimes of the power elite, and much of the relevant literature does not examine the power elite but more minor white collar offenders.

The idea that personality matters distracts from the real issues that Barak's work continually points toward – that the structure of the network of power and control, and how that structure produces the crimes of the powerful and the failure of the remaining power elite to control those offenses. In contrast, by drawing attention to the individual differences between powerful offenders and non-offenders,

the orthodox criminologist does a disservice. The orthodox criminologist believes in a general explanation of crime, one form of which includes a psychological explanation of crime and deviance. In this sense, there is little difference between the powerful offender and the street criminal -- both engage in their crimes because they suffer from personality or psychological deficits. An important point of Barak's work, which joins him to others in the classic radical school of criminology (e.g., William Chambliss, Herman and Julia Schwendinger, Richard Quinney, or Jeffrey Reiman) when it comes to explaining crime is to draw attention to the structure of the process that results in financial crime. Since the power elite recruits and sometimes socializes from birth its members, and ensures that they have a given set of values and are predisposed psychologically to the way of life of the power elite, personality itself is a dead end when it comes to explaining how it is that the power elite manages the theft of the nation. That is to say, Barak correctly understands that the theft of the nation cannot be a result of the random impacts of personality (e.g., rogue traders), but rather is a product of the routine organization and exercise of power, albeit through micro-level social processes. The theft of the nation is an organized activity, coordinated across the segments of the power elite by specific actions and by the whole organizational structure of major institutions, and cannot simply be an outcome associated with the distribution of personality types among the power elite. Besides, for personality to produce a persistent outcome that results in the theft of the nation, that elite groups would need, psychologically, to have quite similar personalities. And, those personalities must be consistent with the entire operational structure of the power elite and its organization. That is to say, if personality is the problem, it is not an individual-level problem, but a structural one. Indeed, it is not so much deviant personalities that produce financial crime but conforming ones, operating within the norms and according to the values of the power elite, engaging in different levels of the same kinds of behavior, rather than different behavior.

Thus, in contrast to Barak's approach toward financial crimes, the orthodox view on financial crimes distracts attention from the structural origins of that crisis. As Barak argument correctly implies using different cases and different layers of analysis and theory, the theft of the nation can in no way be a mere manifestation of psychological properties of the isolated individuals who form the ranks of the power elite. Indeed, the very fact that the theft of the nation is so deeply embedded in the structure of American institutions indicates that it is the institutional arrangements themselves that are problematic. But orthodox criminology has long distracted our attention from the ways in which economic, political and social structures intersect to produce crime through the generation of laws and regulations of various types and how those rules are applied.

In sum, if we dispatch the orthodox notion that the theft of the nation is simply an individual-level condition, then we must instead consider how these individuals and their social processes are embedded in a wider institutional and structural context, which requires a structural-level explanation for the patterns that comprise the theft of the nation. This is an important aspect of Barak's work—how organizational structures generate the circumstances that produce the micro-level processes that constitute the theft of the nation. In the section that follows, I take up some of these themes, highlighting an important issue that Barak raises: the role of capitalism in the theft of the nation.

## CAPITALISM AND THE THEFT OF THE NATION

The premiere architect of the critique of capitalism, Karl Marx, found the system of capitalism, which he saw as based in the exploitation of working class labor, to be reprehensible, immoral at its roots and, one could say, a crime against human dignity and the effort of the human race to achieve the kind of lifestyle in which all people would have equal opportunities to enjoy life. On these points, for example, Marx referred to capital in the following ways: “Capital is dead labor, that, vampire-like, only lives by sucking living labor, and lives the more, the more labour it sucks” (Marx 1974:233); and “. . . in its blind unrestrainedly passion, its werewolf hunger for surplus-labor, capital oversteps not only the moral, but even the merely physical maximum bounds of the working-day” (Marx 1974:265; see also p. 243).

I refer to these particular descriptions of capitalism in Marx's work to highlight a connection to the previous section on personality. Though fictional, the werewolf and the vampire are driven by their lust for blood, a trait bound up in their very being. This illusion is, I believe, exactly why Marx makes reference to these fictional creatures and turns that discussion to the nature of capitalism to illustrate his point that at the center of its very being, capitalism is anchored in a need to exploit. This is, one can say, the very soul and psychological property of capitalism is exploitation.

Theoretically, the forms of exploitation that occur under capitalism can be interpreted as “legitimate” to the extent that as a system, capitalism is required to exploit the labor of the worker in order to produce value. As Marx showed in his work, capitalism could not exist without exploiting the worker, and if the capitalist did not extract more labor value from the worker than the value paid to the worker in wages, it would be impossible to have capitalism. That is true because without the extraction of unpaid, exploited labor, there would be no additional value that would result from production to promote the expansion of capital. In short, without unpaid labor resulting from the organization of capitalism, the capitalist, as Marx illustrated, would simply be shifting capital from

one buyer to the next, and there would be no production of new value or the accumulation of value.

Capitalism is now global, and widely accepted. Its practices are not as widely challenged as they were in past decades or epochs, and capitalism is now often held out as the way to not only individual success and freedom, but also as a mechanism for nations to raise themselves and their people up in the world hierarchy of capitalism -- to spread wealth and enjoyment. While space limitations preclude an analysis of this claim, there is significant evidence to suggest that capitalism also spreads poverty and misery, and the greatest benefits of inequality accrue to the power elite (Frank and Cook 2010). Rather, my point here is that even within this system of exploitation, exploitation can become a detrimental force to the preservation of capitalism. Moreover, the logic of exploitation, when applied inappropriately by the power elite, or its individual members, can challenge the legitimacy of that system. In this sense it is useful to discuss the idea of capitalism and the theft of the nation, and to acknowledge the utility of Barak's work in extending this view.

If, as Barak suggests, we think of the theft of the nation as a structural dynamic associated with the organization of society, we are forced to ask a deeper question: why has the organization of American society evolved in such a way so as to produce tremendously large financial crimes? Part of the answer has to do with the inherent structural limitations of capitalism and the contradiction between those structural limitations and other aspects of capitalism such as inculcating the drive for endless accumulation. The summary of this argument that follows is based on the work of Marxist ecologists, who have extended the economic model of Marx to include the exploitation of nature (e.g. Burkett 2005; Foster 2001a, 2011b, 2007, 1992; Hornborg 1998; O'Connor 1998, 1991, 1989a).

The work of the ecological Marxist allows us to recognize that capitalism cannot, as its ideological vision suggests, expand indefinitely. The reason this is true is that the expansion of capital requires the continuous consumption of raw materials and their transformation into commodities by exploited human labor. In other words, the expansion of capitalism is limited by the physical realities of the natural world around us, and capitalism cannot expand beyond the confines of the materials found in nature. In this sense, capitalism needs nature, because it is the work that nature does in its natural economy that provides the stuff for commodities. Those physical realities also include the production of energy from stored natural resources. There is a finite volume of stored energy resources. The more capitalism expands, the faster those resources are used, and the less energy is available for future work. The extensive use of fossil fuels to run the treadmill of capitalist production is also one of the driving forces behind other aspects of the contradiction between

nature and capitalism such as climate change (Stretesky, Long and Lynch 2013).

In addition, the relationship between capitalism and nature is a one way relationship, in which the wealth of nature is transferred to the human economy through the application of exploited human labor. The essence of this one way relationship is to the distinct advantage of capitalism. The flow of material assets moves from nature to capital, as capital exploits nature by taking valuable material from nature without compensation, and in return capital gives nature back useless waste products and a damaged ecological system less capable of reproduction. Both forms of exploitation damage the ability of nature to reproduce the conditions for life.

The point of the foregoing discussion is to highlight the central role exploitation plays in the system of capitalism. Not only must capital exploit labor, it must also exploit nature. This essential connection between exploitation and the health and vitality of capitalism returns us to Marx's caricature of the were-wolf and vampire-like nature of capitalism. Like the vampire who exploits the ability of other creatures to produce blood, capital lives like a parasite on the work generated by nature and the working class. The unnatural nature of this relationship is clear -- the worker does not need the capitalist to do work, but the capitalist must have the labor of the worker to survive. Nature, too, does not need capitalism for its survival, but capitalism must feast upon the work of nature to live. The parasitic nature of the exploitive relationship between the capitalist, on the one hand, and nature and the worker on the other, is the key to understanding what really happens in a capitalist system of production.

In the view of those outside the capitalist system such as Marx, the inherently unequal and exploitative soul of such an arrangement between the capitalist and nature/workers is made to stand out not simply as an outcome that sometimes happens, but as one which must occur systematically. It is not the "bad capitalist" that exploits workers/nature; all capitalists must do so, some perhaps more so than others. In this sense, exploitation is not dependent on the personality characteristics of the capitalist; it is a psychological property of the core of capitalism as a system. Exploitation must occur, and it cannot be otherwise if capitalism is to survive.

But, it is precisely the central importance of exploitation to capitalism, and its necessary expression within capitalism, that causes capital to exploit itself, and to eat away at the structure of the system upon which it is built. Capitalism, if we follow Marx, is corrupt from its inception as a system of legitimized theft and exploitation. That this legitimized theft of labor eventually leads capital to consume and feast upon itself should come as no real surprise. The vampire must live, and when, at some point, the various contradictions of capitalism that limit growth and stunt the continuous expansion of profit making

occurs, the capitalist is all too willing to accelerate the forms of exploitation which are practiced. Indeed, we could argue from the previous discussion of capitalism and personality, that the capitalist is raised, trained, and recruited for just such a task. If, for example, we ignore the legal rules of capital which legitimize the exploitation of the worker and nature as justifiable acts, there is no real difference between the forms of crimes Barak describes and the theft of wages the capitalist must produce to turn the wheels of capitalism.

Unlike the micro-level, orthodox criminologist who only sees the seeds of a deficient personality within the individual as responsible for the crimes of the powerful, we can turn instead to the contextual analysis of Mills (1959) who understands the association between the psychological properties of capitalism as an organization entity, and the psychological properties of the individual. As Mills argued, when we analyze a social problem, we must, if we are to understand the range of factors that produce that problem, first fully situate the problem at hand within the historical context of the society in which it occurs. Following Marx who argued that "circumstances make men just as much as men make circumstances," Mills directs us to take into consideration how the individual and social structure intersect and interact. Thus, it is not simply "bad men" who make crime; it is the totality of the lives those individuals lead within the structuring confines of the social system in which they live that must also be taken into account.

It is this rich, contextual analysis of the theft of the nation that Barak exposes throughout his book. For Barak, the crimes that lead to the theft of the nation are not the acts of "bad men" with psychological deficits. Rather, the theft of the nation is intimately connected to the organizational structure of the nation. Without considering that organizational structure and its various layers, one cannot appreciate how it is that the theft of the nation occurs, for it is facilitated, across multiple domains by multiple segments of the power elite. What's more, while Barak uses the financial crimes of the housing market and Wall Street to illustrate his points and to develop a contextual analysis of these problems, there is little reason to believe that this same approach cannot be applied to other crimes of the power elite, an issue I shall return to shortly.

It is clear that by working in the classical tradition that C. Wright Mills explored, Barak returns us to a richer, more intellectually satisfying depiction of the crimes of the powerful. These crimes cannot be reduced to the individual level explanations traditional criminology favor as explanations of all crimes. If in reading Barak's work the reader feels unsettled by these revelations, then Barak has done his job well, because he has made the reader question her/his assumptions about how it is that the theft of the nation can occur, and how the structure of the nation

contributes to that theft, and why each portion of the power elite is willing to allow the theft of the nation to continue.

More disturbing than accepting Barak's view on this matter, is realizing that if Barak is correct, then the theft of the nations will occur repeatedly, because it is part of the structural composition of the economic, political, and social life of modern society. The anxiety this view generates in us stems from the fact that when we accept Barak's argument, we realize that there is nothing we can do about such crimes unless we are willing to change the very nature of the system. This means challenging the very basis of capitalism and its inherent tendencies to legitimize exploitation as an acceptable form of social and economic arrangements.

Capitalism, as Marx predicted, is based on a set of relations that pose various contradictions which must be continually reorganized to facilitate profit making. There are various forms of contradictions in the modern era. In two classic economic works, James O'Connor (1973, 1989b) analyzed issues such as the fiscal crisis of the state, and the mounting accumulation problem. The fiscal crisis of the state involves the need for the state to meet two often contradictory functions: facilitating capital accumulation and promoting the independence and legitimacy of the state. One way in which the state traditionally facilitated capital accumulation and state legitimacy was through welfare expenditure, which reabsorbs wages and redistributed them to promote economic equity among the working class. Building on O'Connor's argument and other relevant economic arguments, it is clear that in the 1970s and 1980s, the state began to lose control of its accumulation and legitimation functions with the advent of neo-liberal capitalism and the decline of the welfare state. Unable to facilitate accumulation and legitimacy in traditional ways, the state instead accelerated deficit spending to stimulate accumulation. This "trickle-down" economic approach should, in theory, promote not only the expansion of capital accumulation, but job creation and increased income for the working class -- an idea that one of its most ardent supporters during the Reagan Administration, David Stockman, now rejects. The result, however, was an increase in the concentration of wealth, significant job losses, the transference of manufacturing capital overseas, and a decline in the economic power and inflation adjusted income of the working and middle classes.

The changes that occurred in the US economy shifted capital investment from manufacturing to the financial and service sectors, and as Barak points out, made financial markets a target for investors seeking large financial returns. In the absence of a solid manufacturing base, finance capital took on greater importance as a means for accumulating wealth, and the importance of this sector to the power elite also expanded. At the same time, deregulation of the financial sector established conditions under which large scale financial frauds could be

undertaken. And, given that those recruited into or raised in the tradition of capital shared personality traits consistent with taking advantage of such opportunities, large scale financial crimes accelerated.

Within the structural confines of capitalism, there is little that can be done to control the consequences of these economic transformations. The state has little motivation to do so since with the advent of neo-liberal capitalism, the state largely abandoned its commitment to maintaining legitimacy among the poor and the working classes, and began to more visibly shift its legitimation function to maintaining conditions for capital accumulation. Coupled with enfeebled enforcement and regulation, the organizational context of American capitalism became ripe for promoting the theft of the nation.

### **Extending the 'Theft of a Nation' Argument**

Above, I have extended Barak's argument to illustrate its importance with respect to the classic traditional of sociological analysis of the deleterious impacts of capitalism. This is a more general view than taken by Barak, who more aptly wrestles with the manifestations of these conditions at various organizational levels of analysis in ways that cannot be produced by my structural imagination. I have not suggested these comments as criticisms, and in fact believe that Barak's model is a fine example of the forms of integrated, classical thinking he has examined elsewhere (see Barak 2009).

Turning from that discussion, in this section I briefly address additional implications of Barak's argument beyond the explanation of financial crimes, and apply his theft of a nation argument to one of the primer concerns of our times: the theft of public health. By "theft of public health" I mean the tendency for the power elite to adversely impact ecology in ways that undermines public health.

With the exception of an expanding literature on green criminology, criminologists pay little attention to issues relevant to green crimes and justice, and how environmental damage undermines public health and causes extensive victimization. Any number of examples can be described here to reinforce the claim that green crimes cause extensive damage, damage that is well in excess of the harms produced by street crimes (Lynch 2013; Lynch and Stretesky forthcoming). Unlike street offenses which typically involve one victim or sometimes a handful of victims, green crimes such as pollution victimize millions. Moreover, green crimes, such as environmental pollution, not only harm humans, they also victimize other species as well as ecosystems. Because of their very nature, green crimes of pollution tend to have far reaching consequences as pollutants, once emitted into the environment, travel through various environmental media. Confirming that observation, industrial pollution has been discovered in remote regions of the world where there are

no industries or expansive human settlements (Bargagl 2000, 2005), and in the world's oceans and marine animals (Jensen 2006; Noyes et al. 2009; Ueno et al. 2004).

For human populations as well, industrial pollution is a ubiquitous problem (Carpenter 2006). The historical record of harmful pollutants such as mercury, for example, illustrates the impact of the industrial revolution and even modern manufacturing on the prevalence of mercury deposits in ice core samples (Schuster et al. 2002). These industrial pollutants have numerous consequences for human health which are beyond the scope of this paper to review in their entirety (e.g. see Carpenter 2006; Colborn, Dumanoski and Myers 1997; Faroon, Jones, and De Rosa 2001).

Consistent with Barak's argument, the organizational structure of the forms of social control designed to contain these environmental harms is ineffective (Burns, Lynch and Stretesky 2008). As research suggests, the laws and enforcement mechanisms that regulate environmental crimes are enfeebled, and affected by the influence of various sectors of the power elite which seek to preserve economic expansion over public health. Similar to the story told by Barak, rich, detailed works on these concerns have been published (Markowitz and Rosner 2013, 2012; Rosner and Markowitz 1994), and should play a greater role in influencing criminological research. Also important to the criminological examination of the power elite's role in producing green crime and victimization, are issues of environmental justice, or the unequal distribution of pollution across communities with varying racial, ethnic and class compositions (Liu 2001) and the struggles of those communities, including issues related to the contested illness process (Brown 2007), to address their victimization, which includes the development of environmental community-based pollution and compliance monitoring (Lynch and Stretesky 2013). These latter issues in particular are in some sense "peculiar" to the study of pollution, since perhaps with the exception of the "Occupy Wall Street" movement, there is no similar, widespread development of a social movement against financial crimes (on the extend of environmental social movements see Stretesky, et al. 2011).

With respect to other issues described above, pollution is an example of the inherent tendency of capital to exploit nature to generate profit. In the case of the pollution, exploitation occurs when wastes are emitted back into nature. There are, of course, other ways to solve the problem of pollution, such as changing the manufacturing process, treating and reusing waste streams. Financially, however, these available technologies would lower profits, and for the capitalist, there is little reason to promote public health and environmental quality at the cost of reduced profit.

## CONCLUSION

Barak's books is not only an exceptional contribution to scholarship on white collar crime, evident by the awards this work has already received, it provides criminologists with a guide to exploring other forms of white collar, corporate and green crimes as well. It is an excellent example of the kind of work criminologists ought to produce more often.

The problem, which has always been the case -- and an issue Edwin H. Sutherland took up in the late 1930s -- is convincing criminologists that the kinds of issues Barak explores are of much greater concern to society than the street crimes of the poor. In general criminologists, like the public, are obsessed with street crime despite the evidence of the significant harms the power elite produce. As a discipline, criminology contributes to the image of crime as a lower class phenomenon, and it is high time criminologists take the issue Barak and others describe much more seriously. Societies do not collapse because of the behavior of street offenders, but rather in many cases because the power elite and the capitalist system of exploitation in which they are enmeshed, lead us in the wrong direction. The financial crimes of the power elite and the inability of other segments of the power elite to control those crimes presents a serious example of how it becomes possible for the power elite to undermine the very basis of social organization, and, indeed, even undermine the social organization on which their system depends.

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## The Flickering Desires for White-Collar Crime Studies in the Post-Financial Crisis: Will They Ever Shine Brightly?

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**Keywords:** corporate crime, criminological scholarship, financial crime, newsmaking criminology, state regulation, white-collar crime

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Let me thank Elliott Currie, Mary Dodge, Paul Leighton, Mike Lynch, and Robert Tillman for participating in this symposium stimulated by the publication of *Theft of a Nation*. Each of these commentators provides thoughtful responses and reflections on the crimes and victims of the powerful: Currie on the implications and wider social consequences for a developed democratic society run by an elite group of financial criminals; Dodge on the complexities of legal status, financial damages, and victimization; Leighton on (1) the diminishing consciousness of corporate crime, (2) the increasing abuses of corporate power, (3) the expansion of economic inequality, and (4) the contraction of class inquiry; Lynch on the structural connections between financial exploitation and other related forms of corporate, ecological, and environmental crime; and Tillman on the criticality of societal dependence on the growth of financial capital as the motive force behind Wall Street looting and federal regulatory colluding.

From the beginning let me also acknowledge that the other essays in this symposium fittingly harmonize with the kinds of analytical responses that I had hoped *Theft of a Nation* would prompt from a criminological readership. In other words, connecting with other criminologists who could take my ideas and apply them to the full spectrum of the crimes of the powerful was certainly a goal of this writing project, a goal that has been facilitated by both this symposium and another one that will appear in a fall 2013 issue of *Contemporary Sociology: A Journal of Reviews*,

featuring *Who are the Criminals?* by John Hagan and *Theft of a Nation*.<sup>1</sup> In each symposium, I have directed more than a little space to correcting what I regard as misrepresentations of some of my critical points or arguments.

As a broad field of criminological inquiry, pedagogy, and research, the study of white-collar crime has remained marginal to the discipline ever since its formal birthing on December 27, 1939 when Edwin Sutherland gave his presidential address, entitled "The White Collar Criminal," to the members of the American Sociological Association. After all of these years, one concern of mine, especially as a newsmaking criminologist (Barak 1994), is that in 2013 the investigation of white-collar crime and its social control still resides outside the core of the criminological imagination. In fact, one might argue that the study of white-collar crime has never made its way off of the "endangered species" list of criminology and criminal justice, and its continued near omission persists at a time when actual human civilizations may be passing, as we have known them. On the other hand, one might argue that the flickering desires for studying white-collar crime within criminology aided by community-based organizations, NGOs, and other non-profits, may still gain traction and shine brightly from the virtual knolls of an emerging and larger worldwide undertaking for sustainability (Agnew 2012; Farrall, Ahmed, and French 2012; South and Brisman 2013).



*Theft of a Nation*, like several of my books, employs a social-historical approach to its subject matter. In this case, the subject is an examination of the non-prosecution of high-risk securities frauds and the legal contradictions between private banking and the state and state regulation of public banking on behalf of investors and taxpayers. As with my other social histories, such as the emergence of the public defender system in the U.S. (Barak 1980) or, homelessness in America (Barak 1991), this one calls for a cluster of collective action. In this volume, however, collectivities refer as much to the activities of criminological study as they do to the activities of body politics. So for this reason alone, let me further recognize the other analysts-researchers in this exchange for their willingness to amplify, enlarge, and generalize from many, if not all, of my thematic arguments that were developed specifically to explain the inter-workings of the Wall Street financial meltdown of 2008-09, the at-risk U.S. banking policies, and the enforcement of civil, criminal, and regulatory laws concerning the thousands of illicit securities transactions, circa 1999 to 2009.

In the opening of this journal's issue McGurrin, Jarrell, Jahn, and Cochrane have identified the dismal and paltry representations of white-collar crime in both the criminological literature and the pedagogical curriculum of U.S. criminology and criminal justice Ph.D. programs. Allow me to accentuate their findings by pointing out that neither the American Society of Criminology nor the Academy of Criminal Sciences has a division or a section that cultivates the area of White-Collar Crime. This organizational reality exists because there is apparently simply not enough demand to warrant the formation of such groups or outlets. Yet comparatively, there is enough demand that the ASC has eight divisions catering to such interests as Corrections & Sentencing, Critical Criminology, Developmental and Life-Course Criminology, Experimental Criminology, International Criminology, People of Color & Crime, Victimology, and Women & Crime. Similarly the ACJS has demand for ten sections catering to differing and overlapping areas of interest with the ASC, including Community College, Corrections, Critical Criminal Justice, International, Juvenile Justice, Law and Public Policy, Minorities and Women, Police, Restorative and Community Justice, and Security and Crime Prevention. Moreover, while several of these divisions have journals, there is no such journal for white-collar crime. Indeed, taken more broadly while there are journals for many categories of crime, such as school violence, suicide and homicide studies, for gang research, etc., there is no journal devoted to white-collar crime.

What's more, by slightly reframing McGurrin et al.'s thesis, it seems to me that if criminology and criminal justice studies are ever going to be relevant to the actual body of knowledge informing "white collar crime public policy solutions aimed at reducing its costs and consequences," then the relative absence of an

examination of the crimes of the powerful must cease and desist, the sooner the better. However, given the 75-year old history of white-collar crime studies, this seems almost as unlikely as the United States ever criminally prosecuting any of the high-risk securities fraudsters occupying the offices of the biggest Wall Street firms.

Before turning to the five commentaries, a couple of self-disclosures: Like Elliott Currie I am not "a specialist on white-collar crime generally, much less on financial crime specifically." I, too, "come at these issues from the perspective of a criminological generalist." I believe, however, that more important than my status as a relative outsider to financial control frauds are the tools, methods, and perspectives that I borrow from social history, political economy, and critical legal studies. Even more so than the formal study of white-collar crime, these approaches inform both my investigation and analysis of Wall Street looting and federal regulatory colluding. Stated differently, it is the interplay of these intellectual lenses combined with the overlapping and merging historical forces that drive the critical narratives running throughout my text, which were not fully appreciated here by some of the otherwise refined and excellent commentaries.

Similarly, as a criminological generalist without a specialty who has written on numerous subjects over the years, I only started to think seriously about Wall Street securities fraud when I decided to write *Theft of a Nation* in March of 2010. At the time, I committed myself to writing this book because there were some 50 books available on the largest financial crime in U.S. history and not one of these by a criminologist. In 2013, there are now more than 200 books on Wall Street's epidemic of transgressions and the financial meltdown of 2008 that ensued because of these. More significantly, my book still stands by itself as the only one written by a criminologist.<sup>2</sup> Without doing the calculations, I suspect that the number of books written by non-criminologists on these financial crimes exceeds the number of "card carrying" white-collar criminologists in the U.S.<sup>3</sup> These social realities may have more than a lot to do with why Robert Tillman and his colleagues frequently complain about the relatively low visibility of research on white-collar crime in academia or policy studies. I further believe that this also explains the undersized study of white-collar victimization surveyed by Mary Dodge in her commentary.

To re-paraphrase: I believe that the current lack of white-collar crime discernibility in criminology speaks volumes to the more fundamental absence of theory, practice, and research devoted to the policy, teaching, and writing about the crimes of the powerful. I further believe like Jock Young (2011) that the growing state of criminological irrelevancy has a lot to do with the influence of mainstream criminology and its misplaced emphases on scientific positivism and abstracted empiricism. Likewise, as Paul Leighton contends in his commentary I also believe that these scholarly omissions

are directly linked to, or connected with, the serious lack of attention paid to economic inequality and to class-based analyses of crime and crime control in the United States.

Finally, in bringing to a close my introductory thoughts on the thoughts of the five other criminologists, allow me to leave you with an extraction of sorts based on and/or from *Theft of a Nation* that provides a synopsis of both my approach to and argument about the “crimes of capitalist control.” As I wrote on page four, “Marx and Weber would have understood that this investigation is about the interplay of the developing political economy and the bureaucratically rational legal state.” At its core, this work “is a study in the structural contradictions of *bourgeois legality*.” Theoretically, the reciprocal model developed in Chapter 4, “Theories of White-Collar Illegality and the Crimes of the Powerful: A Reciprocal Approach to the Political Economy of Wall Street Looting and Federal Regulatory Colluding,” for example, explains the contradictions of securities frauds and state intervention that date as far back as the early 1600s in Amsterdam. These same contradictory social relations that enabled the kinds of high-risk securities frauds then as now, which have always been *de facto* beyond or outside of the formal criminal law enforcement and regulatory regime in practice, are proof of the integration of William Chambliss’ *structural contradictions theory of crime* (Chambliss and Zatz 1993) with Donald Black’s *theory of law in action* (Black 1976/2010).

## RESPONDING TO ELLIOTT CURRIE

Overall I enjoyed the framing of Currie’s commentary and thought his estimate of the costs of financial fraud as one trillion dollar annually to be reasonable and consistent with the estimated annual losses of internal fraud by the Association of Certified Fraud Examiners. For perspective, however, I would like to mention that the Wall Street debacle accounted for more than \$20 trillion in lost wealth globally. It also cost some 20 million workers their jobs worldwide. Domestically, by the end of the 2012, twelve million borrowers in the U.S. were “underwater,” owing \$600 billion more on their mortgages than their homes were worth. In addition, between 2007 and the end of 2012, some 4 million American households lost their homes to mortgage foreclosures.

In terms of Currie’s criticism of my tentativeness and the lack of conviction in my conclusion compared to my detailed analysis up to that point, he is correct. At the time, as a non-economist who had only been studying securities fraud and the Wall Street meltdown for less than two years when I wrote the conclusion, I was admittedly not as ready or sure of what my recommendations should be in order to prevent future Wall Street busts without breaking up the banking cartels. I had read a fair amount on the subject yet I ended up relying on others’ assessments, evaluations, and recommendations. In

particular, I was very much influenced by former Treasury Secretary Henry Paulson’s *Blueprint for a Modernized Financial Regulatory Structure*, the Obama Administration’s *Financial Regulatory Reform: A New Foundation*, and economist Robert Shiller’s (2011) chapter, “Democratizing and Humanizing Finance,” in the edited volume, *Reforming U.S. Financial Markets*. Unfortunately, many of these ideas or recommendations did not find their way into Dodd-Frank, or if they did, they have yet to materialize as discussed in my response to Leighton below.

In any event, as Currie recognizes I was much more confident about what had caused the financial meltdown of 2008, and why the Wall Street fraudsters (or their associated institutions) were not criminally prosecuted than I was about how to prevent future implosions. At the same time, I was certain that the infrequency, if at all, of any prosecutions of high stakes securities fraud and/or of a “self-regulating” financial services industry, would never realistically halt, or even restrict, any future epidemic outbreaks on Wall Street. Thus, I did not advocate for either of these approaches, alone or in combination.

Making matters more complicated and unsettling for me when it came to recommendations was that I had only just begun to appreciate that there were “good” and “bad” derivatives. Finally, to be perfectly candid I did not understand how a modernized version of Glass-Steagall or a new mechanism of some sort could be re-created where liquidity and the inability to meet payment obligations would be separated from large-scale financial gambling, without economically breaking up the banking cartel and its political oligarchy in Washington, D.C., which I did not and still do not see as happening anytime soon, short of the next Wall Street meltdown.

So with some timidity, I lined up “wishy-washy” behind Shiller’s (2011) guiding principles for re-regulation rather than articulating a series of bullet-point recommendations of my own, which would have included many of his policies as well as those policies calling for more structural change. In fact, before I eventually “spit out” here and there some general recommendations, I first took the reader through Schiller’s more moderate and interesting technocratic approach. After Shiller came my imaginary bailouts in the very last section of the book—A Fantasy Bailout for the American People—where the compensations to Main Street unfold during a National Tribunal for Reparations for the Crimes of Securities Fraud Committed Against the American People. It is not until the Postscript, however, as Currie correctly points out that I finally got around to calling for either the breakup of these too big to fail financial institutions and/or the nationalizing and public ownership of these mammoth banks.

Today, I am more confident that breaking up the gigantic banks rather than allowing them to fail or prosecuting them for jail is the best way to avoid future

financial scenarios like the dot.com, mortgage, and other Wall Street-like bubbles and bursts. In terms of “what needs to be done” to strengthen the social economy, I am not as confident of how to democratize the political economy of capitalism for the masses. Yet, I now have a list of recommendations, including several mentioned in the book, for struggling to democratize the political economy. In addition to two measures mentioned in my response to Lynch below, these currently include but are not limited to: breaking up and/or nationalizing the too big to fail or jail banks; exempting securities trading, insurance operations, and real estate transactions from the FDIC; standardizing derivatives and trading them openly on the public exchanges; instituting a financial transaction tax to discourage excessive trading and risk; taxing earned, unearned, and carried interest income at the same rates; and establishing state-owned banks and creating Benefit or “B” corporations.

## RESPONDING TO MARY DODGE

As it worked out, *Theft of a Nation* devotes slightly more attention to victimization than it does to financial crimes and legal enforcements of securities frauds. For example, not counting the Introduction and the Conclusion, there are seven chapters in the book and the word “victimization” appears in four of those, showing up twice in separate titles and showing up twice in separate subtitles. So I was pleased that Dodge decided to target victimization in her essay. Generally, she provides a succinct and inclusive overview of the dilemmas facing the array of victims of white-collar crime and why the prospects for making these folks whole again looks less and less likely as one descends the socioeconomic ladder of victimization.

Let me say that I am in accord with most of what Dodge has written. However, I do have some comments to make on a few of the critical points that she raises. First, I am not at all optimistic about a day coming when many victims of WCC will see themselves experiencing some kind of relief or restorative justice where they are made whole again for their financial losses. While I agree that most victim rights measures do not apply to white-collar crime, I also do not view civil lawsuits as any kind of panacea or remedy for the overwhelming number of parties subject to high-risk securities fraud like the millions of mortgage victims, for example, were.

Second, absent the filing of “class action” lawsuits that are increasingly more difficult to legally certify to claim damages from a class of defendants like the Wall Street banks, civil lawsuits are a rich investor’s game, for all of the reasons enumerated by Dodge. But I examine those civil suits for other reasons, including revealing the hundreds of plaintiffs who were awarded hundreds of billions for their injuries due to fraudulent activities as a way of proving that securities frauds did illegally occur.

Therefore, regardless of a preponderance of evidence versus beyond a reasonable doubt, the U.S. Department of Justice could have brought forward criminal prosecutions against any of the largest banking firms since they have all been successfully sued for securities frauds, which often is the way these things go; civil victories leading to criminal prosecutions. The problem was that since all of these financial institutions were legally guilty of victimizing millions of people, it would not have been fair to only prosecute one of them as an “example” without prosecuting the others. Hence, no person or firm was criminally prosecuted for anything. Worse yet, while all the major banking, mortgage, and rating agencies were acting fraudulently with respect to investors and borrowers alike, all of them became the beneficiaries of large bailouts, bonuses, and “get out of jail” free cards.

Third, allow me to respond to Dodge who says about my “application of the ‘weathering framework’ and resulting stress, though thoughtful, creates complexities that are seemingly impossible to overcome in terms of improved program policies designed to assist and compensate victims of white-collar crime.” As I have already stated I have no faith that improved programs for compensating victims of WCC is coming in the near or distant future. More importantly, without the criminal convictions of these financial institutions in the first place, any criminal compensation or restitution schemes for victims are irrelevant. Nevertheless, I like “weathering” as it expands our understanding of victimization in general. Moreover, it is already being employed to compensate victims of corporate crime. Again, while I am not optimistic about victim restitution or compensation programs, whether dealing with street or suite crime, I would point out that variations in weathering did play out in compensating the victims of the British Petroleum Oil Spill. Likewise, when it comes to allocating money for victims of the Boston Marathon Bombings who lost their limbs or lives, weathering will be factored in to the dollar amounts they or their families receive.

Lastly, as far as the April 2013 agreement between the Federal Reserve Board and some of the larger banks, I would not get very excited about this. This was about the third or fourth time that the government and the banks have come up with some proposed payout scheme, adjustment in the foreclosure procedures, and/or refinancing arrangement as part of a “mortgage settlement” for the more than 12 million American families affected by the housing crash. At the end of day, when assistance has come, it has been too little, too late. Folks had already “bellied up” and lost their homes and those underwater are still underwater as there was never enough assistance spread around even when enough money had been allocated. Overall, these monies ended up not be being spent and were only dispersed to a fraction of the injured victims.

Most notably, I refer to the Trouble Assets Relief Program. For example, out of a total of \$700 billion, TARP allocated for those homeowners who were facing foreclosures or whose homes were underwater, \$47.5 billion. Less than 10% or some \$4.5 billion of that money ever found its way to homeowners because under the direction of the former Treasury Secretary Tim Geithner, the administrators in charge of overseeing the refinancing, relief, and forgiveness mortgage programs did not want the victims of predatory lending to directly benefit from their fraudulent mortgages.

## RESPONDING TO PAUL LEIGHTON

In a recent commentary on collaborative authorship, Stuart Henry (2013) made an analogy between marriage and co-authorship when he suggested among other things “partnership can be mutually reinforcing.” I refer to Henry’s essay because Leighton and Barak have been colleagues at the same university for nearly two decades and have collaborated on several writing projects. In particular, we have been co-authoring *Class, Race, Gender, and Crime: The Social Realities of Justice in America* for some 15 years and counting through several editions. Though Leighton and Barak have not totally eclipsed each other over the years, the content of our work especially around white-collar and corporate crime has probably begun to have interchangeable content, if not distinct similarities. I also believe that our erratic yet constant conversing (e.g., in person and online, especially regarding the exchange of emails and links between us, for example, on the latest Wall Street developments) coupled with our rewriting and editing of each other’s work has been mutually reinforcing experiences in how each of us sees the world and analyzes the issues of crime and justice. Hence, it might not be a coincidence or even surprising that Leighton does not critique or misrepresent my ideas in *Theft of a Nation* and I do not have any issues of difference with Leighton’s commentary—although I do have a little tweaking to do. In light of these realities, I will respond to his key points as best and briefly as I can.

### Size Matters

When it comes to financial capital and the banking cartel in the United States, I certainly agree with Leighton, that size does matter. A few key figures should suffice. At the end of 2011, there were some 8000 banks in the United States. The top twenty banks controlled 92 percent of the market and the top three controlled 44 percent (Ritholtz 2011). At the end of 2012, the five biggest banks—Bank of America, Wells Fargo, JP Morgan Chase, Citigroup, and Capital One Financial—held \$7.94 trillion in assets. Moreover, since the Wall Street implosion the Federal Reserve has provided four of these banks (minus Capital One) plus Goldman Sachs with total subsidies equal to

about \$64 billion annually. Astonishingly, this is roughly equivalent to their annual aggregate profits during the same period (*Bloomberg View* 2013).

### Law Making

While white-collar researchers routinely note that the harmful or illegal acts by the wealthy are by way of preemption (e.g. defeating a bill before it becomes criminal law) rather than being criminalized in the first place. I would like to see some actual data as I suspect that this is not uniformly the case and varies within and across the applicable illicit industries one examines. There are, for sure, those corporate criminal codes of other nations such as Australia, Canada, and the UK that Leighton refers to, as well as the fact that there are no laws against corporate assault and/or reckless endangerment, not to mention limited liability in the United States. At the same time, however, there are many other corporate acts that are not precluded from criminalization *de jure* but that are only *de facto* beyond incrimination.

With respect to financial frauds and securities violations in particular, these are all criminal felonies subject to imprisonment. Securities frauds are also objects of administrative, civil, and regulatory laws as well as torts, which essentially make the exact same acts or behaviors not subject to loss of liberty only subject to fines. A case in point, those financial securities frauds that brought down Wall Street and the U.S. economy were all criminal by legal definition and subject to prosecution by the DOJ. Fortunately for the wealthy, these acts are also subject to other legal sanctions defining the same behaviors as not criminal or penal, which of course brings the Federal Reserve, the Securities and Exchange Commission, the Commodity Futures Trading Commission and some 14 other agencies involved in financial regulation into play. In short, the bourgeois legal system, subject to the discretionary application and enforcement of the powers that be allows, at the same time, for both the criminalization and decriminalization of securities frauds.

### Regulation and Enforcement

As for legally buying off and stymieing regulatory enactment in the first place, and regulatory enforcement in the second place, see Chapter Seven, “The Wall Street Financial Reform and Consumer Protection Act of 2010: A Synopsis of Dodd-Frank and the Re-regulation of Financial Abuse.” Three years after the law’s passage, Dodd-Frank has been defanged further with the help of some 2700 lobbyists, lawyers, and consultants costing the Wall Street banking cartel about \$180 million dollars during this period (Rivlin 2013). An update on how the regulatory capture of Dodd-Frank is going, as of March, 2013, revealed that 148 rules had been finalized, 176 rules

had missed their deadlines, and 74 rules were still pending. In brief, the full implementation of Dodd-Frank will likely never happen; it probably won't even be close as it is now essentially high-risk banking as usual. So much for inadequate re-regulatory reforms that were always short of the mark in the first place, namely, breaking up the banking cartels. At the same time, high-risk banking could be significantly curbed without breaking up the "too big to fail," as discussed in the last section of this essay.

### **Crime Reports, Crime Reports When Government Partners with Industry, and Corporate Research on Their Own Victimization**

Yes, yes, and yes. Crime reports and research on white-collar crime, pretty much of any kind, are woefully inadequate at best or non-existent at worst. Where they minimally exist, they are typically one-sided in nature, focusing on the attacks against corporations and their interests, and virtually indifferent to the harms and injuries perpetrated by corporations against workers, consumers, taxpayers, and the environment.

### **Corporate Ownership of the Media**

Rounding out the whole terrible mess of colluding and propaganda is the corporate ownership of the mass media, which is perhaps being taken on a bit today by the emergence and spread of online activism and social media. But this medium is still not much of a match when it comes to the anti-regulatory biases and mantras, not to mention the even more acute dilemmas at work, such as the "regulatory Stockholm syndrome" and/or the "shadow regulating" industry. As the old Marxist adage states, the ideas of the ruling class become the ruling ideas of everybody else. In the present era dominated by finance capital the ruling ideas belong to the "high rollers" of Wall Street. And so it goes, whether we are entertaining what constitutes "securities fraud," "free markets," or "regulatory reforms," the thoughts of or the representative thinking of Wall Street have so far prevailed as the dominant ideology.

## **RESPONDING TO MIKE LYNCH**

When it comes to the study of crime and to white-collar and corporate crime research in particular, Barak and Lynch share epistemological, ontological, and theoretical orientations that do not come across in his commentary as I think they should. In this illustration, I believe that our analyses of securities frauds and the lack of enforcement surrounding them are actually a lot closer than Lynch articulates. In short, I believe that he has downplayed exploitation as a key component of my analysis.

After aptly situating his assessment of and remarks on *Theft of a Nation* in the epidemic of corporate and financial crime that occurred during the first decade of the 21<sup>st</sup> century, Lynch continues by identifying some of those mutual strands of our shared analyses, which include: the roles of C. Wright Mills' power elite in the neoliberal formation of ideology and public policy, the material conditions of the more radical-structural Marxist or dialectical traditions of capitalist appropriation and exploitation, and the structural relations of individual or psychological behavior embedded in the subcultural-organizational worlds of the financial and regulatory services industries. Similarly, Lynch recognizes the attention that I paid to the organizational levels of crime (e.g., Barak 2012, Figure 4.2, Interactive Model of Organizational Fraud, p. 71).

On the other hand, Lynch apparently misses the connection that he should have drawn between the more powerful institutional levels of crime (e.g., Barak 2012, Figure 4.3, Interactive Model of Institutional Fraud, p. 77) that I employ as part of my analysis with his structural imagination or sociological analysis of the deleterious impacts of capitalism. As Lynch writes: "Part of the answer has to do with the inherent structural limitations of capitalism and the contradictions between structural limitations and other aspects of capitalism such as inculcating the drive for endless accumulation." Exactly. As I wrote, while capitalist societies "produce the means of survival, they also produce the means of decline, creating perpetual dilemmas and conflicts" (2012: 6) I continue on the next page:

With respect to the crimes of capitalist survival, these arise from the particular forms of social relations associated with the processes of capital accumulation, concentration, and centralization. The control of these types of financial crimes call for an examination of: (1) the particular dynamics of accumulation that develops when capital is privately owned and the process of accumulation is managed largely for private rather than public interests, and (2) the contradictory political and economic forces that permeate the social relations of criminalization and law enforcement (Barak 2012: 7).

So I am puzzled by how Lynch has extended my analysis. That is to say, my arguments I believe are consistent with the very same set of bourgeois contradictions that Lynch emphasizes in his commentary, albeit if not with the same Marxist pedigree:

Within the structural confines of capitalism, there is little that can be done to control the consequences of these economic transformations. The state has little motivation to do so since with the advent of neoliberal capitalism, the state largely abandoned its commitment to maintaining legitimacy among the poor and the working classes, and began to more visibly shift its legitimation function to maintaining

conditions of capitalist accumulation. Coupled with enfeebled enforcement and regulation, the organizational context of American capitalism became ripe for promoting the theft of the nation.

Moreover, in Chapter Five, “Financial Looting, Victimization, and Legal Intervention: On Criminal Prosecution and Civil Law Enforcement,” the *raison d’etre* or repeating message is to show how the contradictions in capitalism express themselves in the dialectics of bourgeois legality.

Similarly, my current and evolving PowerPoint presentation on Wall Street banking and the diffusing of the risks for future financial meltdown that Lynch has admittedly not had access to, offers a dozen recommendations (an abbreviated version of these were recited in my response to Currie above) for, in part, taking steps to socialize the ownership of wealth and helping to serve the common welfare of communities.<sup>4</sup> Two additional recommendations, for example, #9 [Support Environmental Defense Organizations like the Business Alliance for Local Living Economies and the American Sustainable Business Council] and #11 [Integrate Climate Change Adjustments and Financial Market Incentives] are actually based on the work of several economists as well as by the Marxist ecologists who have as Lynch argues, “extended the economic model of Marx to include the exploitation of nature.” These interconnections between the inherent contradictions of capitalism in relation to both the exploitation of labor and the exploitation of nature are reinforcing of what I conclude are the mutual needs to redistribute the wealth of capital while serving the interests of the communal well-being of the greatest number of people. In other words, both of these are prerequisites for an ecologically sustainable global economy.

In sum, rather than adding to my analysis and explanation, I believe that Lynch more accurately identifies the applicability of these to other crimes of the powerful, especially in the case of “theft of health care” he discusses. I further believe that when my two interactive models of securities fraud are brought together as they are in the inclusive Reciprocal Model of Wall Street Fraud (Figure 4.4, p. 79) that criminologists are provided with what Lynch correctly concludes is “a guide to exploring other forms of white collar, corporate and green crimes.”

## RESPONDING TO ROBERT TILLMAN

One of the themes running almost cover-to-cover in *Theft of a Nation* is that if a bank is too big to fail, then it is too big to jail, for essentially the same reasons. In the case of the Wall Street collapse, both courses of action would have been detrimental to tens of thousands of both very high paid and well paid workers in the financial services industries, to millions of financial investors, individual and institutional, and to the U.S. and world economies. So the

federal regulatory colluding to bail and not to jail is not merely about a criminal cover-up or whitewashing of securities fraud, which they are. More fundamentally, federal regulatory colluding is about doing what most people in positions of power come to view as the “best” course of action for the Wall Street workers, the investors, and the taxpayers as a whole. Colluding also has to do with the mass psychological denial of Wall Street criminality and, more importantly, to the damage control that comes with maintaining the structural faith in the “free market” financial system.

Tillman’s commentary strangely is and is not a reification of my arguments. He reifies my arguments in the sense that his essay covers much of the same territory and in very similar, if not, the same kinds of ways, including examples and references shared in common. On the other hand, Tillman’s essay invites me or any other reader to explore “some of the factors that lie behind the government’s response to the financial crisis.” I think that I tended to virtually all of those factors. I further think that I argued like Tillman does: “The contemporary financial crisis and the apparent failure of the state to aggressively punish those responsible may well reflect structural changes in the American economy.” In other words, I have no doubt that the structural changes in capitalist formation affected the abilities of the state to regulate Wall Street.

If there is confusion here I suspect it may be due either to my two-sided narrative approach or to my usages of the terms, colluding and collusion. In terms of the former, my inquiry moves back-and-forth between the realities of financial markets and securities frauds, on the one hand, and the representations of these financial frauds and their regulation, on the other hand. For example, as U.S. Attorney General Eric Holder testified before the Senate Judiciary Committee on March 6, 2013:

I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy (Gongloff 2013).

Although this has actually been the “private” position of the Obama Administration and the Holder Department of Justice since they each first took office in early 2009, it was not until Holder’s recent testimony that the AG’s rhetoric “came clean” and spoke publicly about the position that he and the Obama Administration had held all along. However, when the AG was unveiling the President’s Financial Fraud Enforcement Task Force for the first time, back on November 17, 2009, he was singing a very different tune: “one of this Administration’s most important missions is to draw upon all of the resources of the federal government to *fight financial fraud in all its*

forms. The Task Force will wage an aggressive, coordinated, and proactive effort to investigate and prosecute financial crimes” (Barak 2012:13).

Amazingly, the exact same do-nothing Task Force consisting of the very same individuals was unveiled again during President Obama’s State of the Union Address in 2012. As for the fourth estate and other social media, not a peep that I know of could be heard pointing out that Obama had played the very same task force card for the second time. That is to say, not one news commentator or politician, or blogger that I am aware of has mentioned this Bill Murray *Groundhog Day* moment.

No matter, neither task force ever set up office, had a staff, or a phone number. Then again, they did not need one since they were not doing anything anyway. Perhaps “austerity” got in the way since less than a dozen FBI agents were assigned to deal with the estimated \$5-7 trillion in lost home equities compared to 100 FBI agents assigned to the Enron case and more than 1000 agents assigned to the Savings and Loans scandal—crimes that together cost less than 1/40<sup>th</sup> as much as Wall Street.

In terms of the latter, I am not sure but I think that Tillman may be assuming or treating regulatory colluding or collusion as involving some kind of intentional conspiracy carried out by Congress and the various federal regulatory bureaucracies on behalf of the ruling classes to cover up their crimes of capital. In terms of my specific usage of these words, I incorporated and extended the work from Michael Johnston’s *Syndromes of Corruption* (2005). Accordingly, regulatory colluding refers, in part, to a governing corruption that “entails the ability to influence Congress’ behavior and regulatory behavior more generally, from the financial industry’s billion dollar lobbying and political campaign contributions to the revolving doors between Wall Street and Washington, DC” (Barak 2012:76). In part, collusion also refers to the ways in which Wall Street has penetrated all three branches of government and, in effect, “established an apparatus of regulatory collusion where criminal prosecutions of [high-risk] securities fraud are out of bounds” (Ibid).

Once again, my reciprocal model of Wall Street securities fraud depicts the working relations of the kind of non-conspiracy regulatory collusion that I am talking about. The reciprocal model has everything to do with the contradictory approval, consent, knowledge, and support of banking policy and justice relations that reproduces high-risk securities fraud that are beyond incrimination. This type of regulatory collusion has nothing in common with popular notions of conspiracy theory. Nor does “conspiracy” have much in common with the type of complicity, collaboration, connivance, participation, and involvement by federal regulators, legislators, or law enforcers, that have coalesced around a prevailing post-Keynesian neo-liberal ideology of “free markets” that I go to great lengths to describe in detail in Chapter Three,

“Unenlightened Self-Interest, Unregulated Financial Markets, and Unfettered Victimization: From the Savings and Loan Bailouts to Too Big To Fail.”

Somewhat differently, when Tillman represents *Theft of a Nation* as resounding with populism, a Progressive strain in American history, and a muckraking journalistic tradition, he is not off the mark. Only there are more layers of influence operating here and there are also popular currents running wider and deeper than Tillman portrays. These are culturally embedded and they include not only the more “radical” Matt Taibbi’s of *Rolling Stone* or the passing voices of the Occupy Wall Street movement, whose analyses also do not vary much, if at all, from those takes on Wall Street looting by mainstream journalists, such as Gretchen Morgenson or Andrew Ross Sorkin. Finally, while my arguments have much in common with some forms of American populism, my narratives are also shaped by, build upon, and resonate with economists such as Simon Johnson, Robert Reich, and Yves Smith, not to mention those white-collar criminologists like Henry Pontell, William Black, Kitty Calavita, and Robert Tillman himself.

Most importantly, *Theft of a Nation* strives to capture the U.S. financial times, past and present, by way of the real people making history and financial policy. What I try to paint is a multilayered picture of the ongoing struggles between financial exploitation and state intervention, struggles that are older than the nation itself. Similarly, my goal by design was to be as inclusive of all positions, arguments, and viewpoints as possible. That is why I try to use the actual words of as many of the relevant economic, legal, and political players as I could to tell the story of trying to regulate the crimes of capitalist control.

## POST OCCUPY WALL STREET, POST DODD-FRANK AND POST FINANCIAL CRISIS: THE “STRUGGLE” CONTINUES

As we all know our political system is less than functional. The last Congress to conclude, the 112<sup>th</sup>, set a record for the lowest number of laws passed since they started counting in 1948. I honestly don’t know if that is a bad thing or not, given our overly conservative US House and Senate. I also know that there is a small, but growing, Progressive caucus in the House and that there are Progressive folks like Sherrod Brown (D-Oh), Bernie Sanders (D-Vt), and Elizabeth Warren (D-Ma) in the Senate. There are also bankers who want to break up the big banks, including Lawrence Summers,<sup>5</sup> and financial regulators like Daniel Tarullo, a Federal Reserve governor, who is also concerned about the ability of these banks to generate highly-leveraged profits and to rely on short-term non-deposit borrowing rather than on equity capital. On May 3, 2013 Tarullo warned the public that too big to fail remains a threat:

We would do the American public a fundamental disservice were we to declare victory without tackling the structural weaknesses of short-term wholesale funding of markets, both in general and as they affect the too-big-to-fail problem. This is a major problem that remains, and I would suggest that additional reform measures be evaluated by reference to how effective they could be in solving it (Nasiripour 2013).

With or without breaking up the big banks, Tarullo like other struggling advocates of re-regulation are pushing such “structural fixes” as: ratcheting up capital requirements for the increased risk posed by a bank’s reliance on creditors who lend on a short-term basis; requiring a greater percentage of a big bank’s assets to be funded by equity rather than borrowed funds; and making it more expensive to be big by further taxing size and complexity. My knee-jerk response is to say “good luck” even though I know that recent bills in Congress, including the one introduced by Sens. Sherrod Brown and David Vitter (R-La), would compel the largest banks to either increase the amount of equity capital or reduce the amount of debt used to fund their assets, or break themselves up into several smaller pieces.

All of the above-discussed measures could indeed reduce risks as well as profits.<sup>6</sup> Therein lies another contradiction in the re-regulation of finance capital. And what about those flickering studies in white-collar crime and social control after the financial crisis? Of course, there is no shortage of valuable work to perform here. After all, crimes of the powerful—state, corporate, financial, and green—are ubiquitous. Unfortunately, there are far too many criminologists willing to conduct research on the powerless and far too few willing to conduct research on the powerful.

## Notes

<sup>1</sup> Those commentators include: William Laufer, Michael Levi, Henry Pontell, and Sally Simpson.

<sup>2</sup> Columbia University Press published an excellent anthology. See: Will, Handelman, and Brotherton (2013).

<sup>3</sup> As of March 2012, there were 159 members who belonged to the White Collar Crime Research Consortium. See:<http://www.nw3c.org/docs/wccrc/wccrcmembers.pdf?sfvrsn=4>.

<sup>4</sup> “Theft of a Nation: Why the Biggest Financial Crime in History Was Not Prosecuted by the United States” has to date been publicly presented in Ypsilanti, New Orleans, New York City, and San Diego. (See the podcast interview with the Vera Institute of Justice in NYC on March 28, 2013: <http://www.vera.org/videos/gregg-barak-theft-of-a-nation>)

<sup>5</sup> As this article goes to publication, Lawrence Summers, who after the financial meltdown had argued vigorously, before President Obama, for breaking up the big banks in opposition to Timothy Geithner, former U.S. Secretary of the Treasury, who argued not to, and prevailed at the end of the day, is believed to be Obama’s front runner to become the next Chair of the Federal Reserve when Ben Bernanke steps down at the end of the year. If that is the case, I would imagine that the economist-banker Summers has changed his position once again since 2009.

<sup>6</sup> For a critique of Brown-Vitter and why it is destined for failure by the fraud control maestro himself, see Bill Black (2013).

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